

*United States Court of Appeals
for the Second Circuit*



APPENDIX

75-7649

ORIGINAL

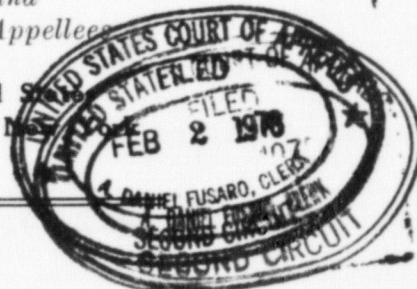
United States Court of Appeals
For the Second Circuit

MARVIN STERN,

*Plaintiff-Appellee
and
Cross-Appellant,
against*

SATRA CORPORATION and
SATRA CONSULTANT CORPORATION,
*Defendants-Appellants
and
Cross-Appellees*

Appeal from a Judgment of the United States
District Court for the Southern District of New York



JOINT APPENDIX

VOLUME I OF IV

Pages 1A to 358A

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PAGINATION AS IN ORIGINAL COPY

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

1A JUDGE LAS

82 CIV. 143

Jury demand date:
2/8/72 by defendants.

D.C. Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

MARVIN STEIN

AGAINST,

SATRA CORPORATION AND SATRA CONSULTANT CORPORATION.

For plaintiff:
KOLODNER, HAUSER, STRAUSS & VOLIN

110 East 42nd St.

N.Y. City 10017

3/3/72 Substituted:

Stronck & Stronck & Lavan
61 Broadway, NY 10006 425-5200

For defendant: (SATRA CORP & SATRA CONS)
Spear and Hill (211th Staff Sgt)
63 Wall St., N.Y. City 10004 3

PATTERSON, BELKNAP, WERD

1 WALL STREET

NEW YORK, N.Y. 10005 2-26-74

NY-31300-(ATTY-FOR-IBM-WORLD-TRADE-CORP)
30 Rockefeller Plaza, NYC 10020 541-40

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DI
J.S. 5 mailed X	Clerk				
J.S. 6 mailed V	Marshal				
Basis of Action:	Docket fee				
BREACH OF CONTRACT.	Witness fees				
Action arose at:	Depositions				

2A

72 CIV. 74

DATE	PROCEEDINGS	JUDGE
Jan 13/72	FILED COMPLAINT. ISSUED SUMMONS.	
Jan 25/72	Filed Summons and Warrant ret. Served: Satra Corp. & Satra Consultant Corp. by Yetvart Ohrikor on 1/13/72 ✓	
Feb 8/72	Filed ANSWER of defendants to complaint, and jury demand. ✓	S&H
Mar 8/72	Filed Notice of Deposition. ✓	
Mar 23/72	Filed Pltff. Reply. ✓	
Apr 20/72	Filed consent and order substituting Stroock & Stroock & Lavan as attorneys for plaintiff in place and stead of Moldover Hauser Strauss & Volin. So ordered. Baumant, J. (mailed notice) ✓	
Apr 17/72	Filed Notice of deposition upon Mr. Ara Ozeemel. ✓	
Apr 19/72	Filed Pltff Notice to take deposition Duces Tecum. ✓	
May 4/72	Filed Notice of Motion Re: Protective Order ret. 5/18/72. by IBM, etc.	
May 4/72	Filed IBM World Trade Corp., Memorandum of Law in support of motion pursuant to rule 26(c) of the FRCP. ✓	
May 15/72	Filed stipulation adjourning motion now ret. 5/18/72 to 5/25/72. ✓	
May 23/72	Filed Pltffs. Notice of deposition of Max Schloss, etc. ✓	
May 24/72	Filed Pltff Notice of taking deposition upon Bette van Staveren Sec. of Satra Corp. ✓	
May 24/72	Filed Pltff Notice of taking deposition upon Mr. Hannor Mott of Satra Corp. ✓	
May 25/72	Filed Pltff. Notice to take deposition duces tecum of James Henry Giffen. Issued Subpoena. ✓	
May 25/72	Filed Memo. End. on motion paper dated 5/4/72. Motion disposed of in accordance with stipulation submitted and signed this date. So Ordered Frankel, J. ✓	
May 25/72	Filed Protective Order by IBM World Trade Corp. with Stipulation attached. Ordered Upon consent of the parties, that any documents produced by IBM World Trade Corp., etc. shall be as indicated, etc. Frankel, J. (mailed notice) (Filed in court) ✓	
Jun 16/72	Filed Pltff. Notice to take Deposition Duces Tecum. ✓	
Jul 10/72	Filed Notice of Motion re: Take Exam. Ret. 7/25/72. ✓	
Jul 10/72	Filed Memorandum in support of defendants' motion for protective order. ✓	
Jul 11/72	Filed Order to Show Cause Ret. Room 110 before Briscant. re: Stay Deposition. ✓	
Jul 11/72	Filed MEMO-END. on Show Cause filed this date. Application denied after hearing counsel for both parties. So ordered. Briscant, J. ✓	
Jul 26/72	Filed MEND.MHD. on motion paper filed 7/10/72. Motion withdrawn by stipulation. Submitted and signed this date. So ordered. Frankel, J. ✓	
Jul 26/72	Filed stipulation and order withdrawing defendants' motion for a protective order; further stipulated that Ara Ozeemel, etc. shall be produced for their depositions prior to 9/15/72, etc., etc. (Filed in court 7/26/72.) So ordered. Frankel, J. ✓	
Aug 26/72	Filed Pltff's affidavit & notice of motion to file an amended complaint & add defendants. Ret: 2-5-73. ✓	
Feb 26/73	Filed MEND ENDORSED on motion filed 1-26-73. Defts not opposing the within motion the motion is GRANTED. Submit Order on notice So Ordered 2-23-73. (M/H) LASKER, J. ✓	
Mar 5/73	Filed Order GRANTED leave to file & serve amended complaint & summons. Pltffs. motion to add IBM World Trde Corp & Ralph Stafford as additional defts is GRANTED So Ordered 3-5-73 (mailed notice) ✓ LASKER, J.	
Mar 5/73	Filed pltff's amended complaint. ✓	
Apr 5/73	Filed Order that Joseph Bomber, John Becker, & Ernest Leveson are hereby appointed to serve a summons and a complaint upon each of the 2 deft's added to this action. ✓ LASKER, J. Clerk.	
Apr 27/73	Filed stip and order that the time of deft. IBM World Trade Corp to answer the complaint is extended to 5/21/73, So Ordered Lasker, J. ✓	

CIVIL PRACTICE

DATE

FILING-PROCEEDINGS

APPROVED
RECORDED
EX-10
PERIODS

- Aug. 20-73 Filed stip and order that the time for deft. IBM World Trade Corp. to answer the complaint is hereby extended to 5/29/73, So Ordered Lasker J.
- Aug. 22-73 Filed deft. IBM World Trade Corp's ANSWER to the complaint. ✓ PBM
- Jul. 30-73 Filed notice of motion Ret. Aug. 8-73, at 10 a.m. Room 2903; Re:Enjoining defts from doing any of the following without giving pltff. 10 days notice.
- Aug. 6-73 Filed aff'dvt. of Robert P. Patterson, Jr. in opposition ✓
- Aug. 6-73 Filed deft's (IBM) memorandum in opposition ✓
- Aug. 16-73 Filed notice of change of address of SPEAR AND HILL attys for Satra Corp. and Ralph Stafford, One State Street Plaza, NYC 10004
344-6200. ✓
- Aug. 23-73 Filed stip and order withdrawing pltff. motion ret 8-8-73 . LASKER,J. ✓
- Aug. 23-73 Filed MEMO END on motion Filed July 30-73! Motion withdrawn . LASKER,J. ✓
- Jul. 17-73 Filed ANSWER to amended complaint by Satra. ✓ S&H
- Jul. 17-73 Filed ANSWER to amended complaint by Stafford. ✓ S&H
- Sep. 17-73 Filed stip. & order that motion by pltff. be resubmitted with a return date at any time on or after 9-30-73--that Satra Corp. or Satra Consultant Corp. shall have the right at any time during the period ending 9-28-73 to apply to the Court for a modification of the provisions set forth in paragraph 3--Lasker, J. ✓
- Sep. 17-73 Filed notice of pltff that deft IBM World Trade Corp. ("IBM") appear for oral deposition. Subpoena issued. ✓
- Sep. 19-73 Filed deft's IBM World Trade Corp. notice to take deposition of pltff Marvin Stern. ✓
- Oct. 19-73 Filed stip. & order that defts. Satra Corp.,et.al shall by reg or certified mail addressed to pltff's counsel, forward within 10 days after execution a photocopy of any contract, agreement or other document which in any way modifies the agreements between Satra Corp. et al dated 9-22-71 and modified 10-5-71--Lasker, J. ✓
- Nov. 20-73 Filed pltff. note of issue. ✓
- Feb. 26-74 Filed notice of change of address for defts. Atty. ✓
- Mar. 26-74 Filed defts. pre-trial memo. (Satra Corp., Satra Consultant, and Ralph Stafford.) ✓
- Mar. 26-74 Filed memo for instructions to the jury by defts (Satra Corp., Satra Consultant, & Ralph Stafford.) ✓
- Mar. 26-74 Filed defts. trial brief and request to charge. ✓
- Apr. 11-74 Filed pltff's memo concerning allegation of damages. ✓

Continued on Page #3

FALCON-TRANSMISSION

ALIMENT
PROTEINIQUE
PROTÉINIQUE
ET PROTEINIQUE

Apr. 1-74	Trial begun 4-1-74. Trial cont'd 4-2-74, cont'd 4-3-74, cont'd 4-4-74, cont'd 4-5-74, cont'd 4-8-74, cont'd 4-9-74 & concluded 4-9-74. Jury verdict for pltff.
May 8-74	Filed pltffs proposed findings of fact & conclusions of law.
May 8-74	Filed pltffs supplemental memo concerning damages.
May 9-74	Filled defts. proposed findings of fact and conclusions of law.
May 22-74	Filled pltffs proposed findings of fact & conclusions of law on issue of mitigation of damages.
May 23-74	Filled deft's proposed findings of act & conclusions of law on damages.
May 23-74	Filled deft's memorandum concerning damages.
Jun. 10-74	Filed pltffs reply memorandum concerning damages.
Jun. 20-74	Filed transcript of record of proceedings, dated <i>April 3-74</i> .
Jun. 20-74	Filed transcript of record of proceedings, dated <i>April 4-74</i> .
Jun. 20-74	Filed transcript of record of proceedings, dated <i>April 8-74</i> .
Jun. 22-74	Filed transcript of record of proceedings, dated <i>April 15-74</i> .
Jun. 26-74	Filed transcript of record of proceedings, dated <i>April 2-74</i> .
Jul. 12-74	Filed transcript of record of proceedings, dated <i>April 5-74</i> .
Aug. 26-74	Filed transcript of record of proceedings, dated <i>April 9-74</i> .
Aug. 26-74	Filed transcript of record of proceedings, dated <i>April 17-74</i> .
Jan. 17-75	Filed Memorandum Opinion #1757....The parties shall submit proposed judgments together with memoranda indicating the computations of damages proposed to be awarded including the theory and computation by which damages should be mitigated.Jucker, J. m/a
Mar 12-75	Filed Memo, in response to Plaintiff's Proposed Judg. and in further support of defts' proposed judg.
Mar 18-75	Filed Add'l Memo of Law by pltff.
Apr. 7-75	Filed transcript of record of proceedings, dated <i>June 19, 1975</i> .
Apr. 20-75	Filled judgment #5,331...Ordered that plaintiff Marvin Stern recover (by payment as in prop. 9 and forth) all the debts Extra Corp and Extra Consultant Corp, jointly and severally, (plaintiff referred to jointly and severally as "Extra") the sum of \$19,186.00 calculated in accordance with the following Schedule I and Stern shall receive the same therefor; (sum exclusive)Stern shall recover of Extra the costs of administration by my account to be taxed and Stern shall have execution thereof. All sums paid during the debt to Stern hereunder shall be paid to Stern's Attn: Stern's & Stroob's Attorneys, and when no paid, will discharge Extra to the extent of such payment. The Court shall have continuing jurisdiction with respect to this judgment....in any event, judgment entered...10:40 AM clock

D. C. 110 Rev. Civil Docket Continuation

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

6 A

MARVIN STERN

Plaintiff,

: AMENDED
COMPLAINT

-against-

SATRA CORPORATION, SATRA CONSULTANT
CORPORATION, IBM WORLD TRADE CORPOR-
ATION and RALPH STAFFORD,

: Action for a
Declaratory Judgment
And For Inducing
Breach of Contract

Defendants.

-----X

Plaintiff, by his attorneys, STROOCK & STROOCK & LAVAN,
alleges as follows:

1. Jurisdiction is founded on diversity of citizenship.

(a) Plaintiff is a citizen of the State of California.

(b) Defendant RALPH STAFFORD is a citizen of the State
of New York.

(c) Defendants SATRA CORPORATION, SATRA CONSULTANT COR-
PORATION and IBM WORLD TRADE CORPORATION are corporations organized
under the laws of the State of New York, with their principal
place of business in a State other than California.

2. The matter in controversy exceeds the sum of
\$10,000., exclusive of costs, disbursements and interest.

FIRST COUNT AGAINST SATRA CONSULTANT
CORPORATION AND SATRA CORPORATION

3. This is an action for a declaratory judgment, pur-
suant to the Federal Declaratory Judgment Act, 28 U.S.C., §2201,
et seq., for the purpose of determining a question of actual con-
troversy between the parties, as hereinafter more fully appears.

4. On or about September 1, 1971, plaintiff and defendant SATRA CORPORATION entered into a written agreement, whereby plaintiff was to receive fifty (50%) per cent of the gross revenues received by defendant SATRA CORPORATION from IBM WORLD TRADE CORPORATION, after deduction of certain expenses as provided. Attached hereto and made a part hereof, is a copy of the proposal of defendant SATRA CORPORATION and a copy of the acceptance of plaintiff, marked Exhibits "1A" and "1B", respectively.

5. On or about September 22, 1971, defendant SATRA CONSULTANT CORPORATION guaranteed the aforesaid agreement. Attached hereto, marked Exhibit "2" and made a part hereof, is a copy of the guarantee.

6. For some time prior to the execution of the aforesaid agreement, and subsequent thereto, plaintiff conferred and negotiated with various representatives of IBM WORLD TRADE CORPORATION and defendant SATRA CORPORATION, or any of its subsidiaries, in connection with purchases by the government of the Union of Soviet Socialist Republics from IBM WORLD TRADE CORPORATION of certain data processing and other equipment.

7. The efforts by plaintiff consisted of, but were not limited to, the following:

a. Telephone conversations between plaintiff and Gilbert Jones, Chairman of the Board of IBM WORLD TRADE CORPORATION.

b. Meetings arranged by plaintiff with representatives of IBM WORLD TRADE CORPORATION and the President and principal stockholder of defendant,

SATRA CORPORATION, Mr. Ara Oztemel.

c. Meetings throughout the first three weeks of September, 1971, between plaintiff and various officers or representatives of IBM WORLD TRADE CORPORATION and SATRA CORPORATION, or any of its subsidiaries.

d. Meeting on September 22, 1971, between plaintiff and representatives of IBM WORLD TRADE CORPORATION for execution of an agreement between IBM WORLD TRADE CORPORATION and defendant SATRA CORPORATION.

e. Diverse meetings during the period from approximately May 1, 1971, to September 22, 1971, and thereafter, with representatives of the Governments of the United States and of the Union of Soviet Socialist Republics concerning prospective sales of data processing equipment by IBM WORLD TRADE CORPORATION, or others, to the said governments.

8. As a result of plaintiff's efforts, on or about September 22, 1971, IBM WORLD TRADE CORPORATION entered into an agreement with defendant SATRA CORPORATION, appointing said defendant, and its subsidiaries, consultant and financial representative for the Union of Soviet Socialist Republics, as more fully set forth in said agreement, a copy of which is attached hereto, marked Exhibit "3", and made a part hereof.

9. At the request of defendants SATRA CORPORATION and SATRA CONSULTANT CORPORATION, plaintiff caused IBM WORLD TRADE

CORPORATION to re-execute the aforesaid agreement, in all its essential terms, with defendant SATRA CONSULTANT CORPORATION, the performance of which was guaranteed by defendant SATRA CORPORATION. A copy of said guarantee is attached hereto, marked Exhibit "4" and made a part hereof.

10. The aforementioned agreement between IBM WORLD TRADE CORPORATION and defendant SATRA CONSULTANT CORPORATION was modified on or about October 5, 1971. A copy of said modification is attached hereto, marked Exhibit "5" and made a part hereof.

11. Pursuant to Paragraph "IIB" of the agreement between IBM WORLD TRADE CORPORATION and defendant SATRA CONSULTANT CORPORATION, IBM WORLD TRADE CORPORATION paid to defendant SATRA CORPORATION, or its subsidiary, defendant SATRA CONSULTANT CORPORATION, the sum of \$25,000.

12. Pursuant to the agreement between plaintiff and defendant SATRA CORPORATION, marked Exhibits "1A" and "1B", annexed, fifty (50%) per cent of the aforesaid payment, the sum of \$12,500., was paid by defendant SATRA CORPORATION or by defendant SATRA CONSULTANT CORPORATION to plaintiff.

13. On or about November, 1971, representatives of the defendants SATRA CORPORATION and SATRA CONSULTANT CORPORATION indicated to plaintiff that said defendants did not consider the agreement between plaintiff and defendant SATRA CORPORATION to be valid and binding upon the parties.

14. Defendants SATRA CORPORATION and SATRA CONSULTANT CORPORATION contend that said agreement does not constitute a binding, bi-lateral agreement between plaintiff and defendant

SATRA CORPORATION and that, in any event, said agreement was induced by alleged material misstatements and misrepresentations of the plaintiff.

15. Defendants SATRA CORPORATION and SATRA CONSULTANT CORPORATION, by their attorneys, have confirmed the position of defendants to the effect that they do not recognize any legal obligations to plaintiff in connection with said agreement.

16. On December 22, 1971, there became due and payable by IBM WORLD TRADE CORPORATION to defendant SATRA CORPORATION, or its subsidiary, defendant SATRA CONSULTANT CORPORATION, an additional sum of \$25,000.

17. Pursuant to the agreement between plaintiff and defendant SATRA CORPORATION and the guarantee of defendant SATRA CONSULTANT CORPORATION, marked Exhibit "1A" and "1B" and Exhibit "2", respectively, plaintiff is entitled to receive fifty (50%) per cent of such payment, no part of which has been paid, although duly demanded.

18. Upon information and belief, there will become due and payable to defendant SATRA CORPORATION or its subsidiary, defendant SATRA CONSULTANT CORPORATION, from IBM WORLD TRADE CORPORATION, substantial additional sums, presently undeterminable, under the agreement between IBM WORLD TRADE CORPORATION and defendant SATRA CONSULTANT CORPORATION, of which plaintiff will be entitled to receive fifty (50%) per cent thereof, less expenses as provided for in the agreement marked Exhibits "1A" and "1B", annexed.

19. Plaintiff has a valid and binding agreement with

the defendant SATRA CORPORATION and a valid and binding guarantee by defendant SATRA CONSULTANT CORPORATION of said agreement, in regard to monies paid by IBM WORLD TRADE CORPORATION to defendants in connection with purchases of data processing equipment from the Union of Soviet Socialist Republics.

20. There exists between the parties an actual controversy in regard to the validity and effect of the agreement, Exhibits "1A" and "1B", annexed, and the validity of the guarantee of defendant SATRA CONSULTANT CORPORATION, set forth in Exhibit "2" annexed.

SECOND COUNT AGAINST IBM WORLD
TRADE CORPORATION AND RALPH STAFFORD

21. On information and belief, From on or about September, 1971, defendants IBM WORLD TRADE CORPORATION and RALPH STAFFORD had due notice and knowledge of the agreement between plaintiff and defendants SATRA CORPORATION and SATRA CONSULTANT CORPORATION, Exhibits "1A", "1B" and "2".

22. Notwithstanding the fact that said defendants had due notice and knowledge of the aforesaid contract between plaintiff and SATRA CORPORATION and SATRA CONSULTANT CORPORATION, said defendants, on and after October 17, 1971, wrongfully, knowingly, maliciously and without reasonable justification, induced and persuaded SATRA CORPORATION and SATRA CONSULTANT CORPORATION to violate, repudiate and breach their agreement with the plaintiff and to refuse to proceed further thereunder.

23. By reason of the fact that the said SATRA CORPORATION and SATRA CONSULTANT CORPORATION were induced to violate,

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repudiate and breach their agreement aforesaid, plaintiff was deprived of the revenues which he would have received therefrom and was otherwise injured and damaged, which damages are presently unknown to plaintiff but are not less than \$12,500.

WHEREFORE, plaintiff demands judgment as follows:

a. That the Court declare the rights and legal relations of the parties under the subject matter have in controversy, particularly with respect to the validity and effect of the agreement and guarantee between plaintiff and SATRA CORPORATION and SATRA CONSULTANT CORPORATION;

b. That the Court declare that the agreement set forth in Exhibits "1A" and "1B", annexed, is a binding contractual agreement between the plaintiff and defendant, SATRA CORPORATION;

c. That the Court declare that the guarantee set forth in Exhibit "2", annexed, is a valid, enforceable and binding guarantee of the agreement between plaintiff and SATRA CORPORATION marked Exhibits "1A" and "1B", annexed;

d. That the Court declare that plaintiff has duly performed under the agreement set forth in Exhibits "1A" and "1B", annexed;

e. That the Court declare that there is due and owing by defendants SATRA CORPORATION and SATRA CONSULTANT CORPORATION to plaintiff fifty (50%) per cent of all monies heretofore and hereafter received by said

defendants from IBM WORLD TRADE CORPORATION under the aforementioned agreement between it and defendant SATRA CONSULTANT CORPORATION;

f. That defendants SATRA CORPORATION and SATRA CONSULTANT CORPORATION be directed to account to plaintiff for all monies received from IBM WORLD TRADE CORPORATION under the aforementioned agreement with defendant SATRA CONSULTANT CORPORATION, and that they be further directed to pay to plaintiff fifty (50%) per cent of all such monies, subject only to the schedule of expenses set forth in the agreement between plaintiff and defendant SATPA CORPORATION marked Exhibits "1A" and "1B", annexed;

g. That judgment be entered on the Second Count against defendants IBM WORLD TRADE CORPORATION and RALPH STAFFORD in an amount presently unknown to plaintiff, but not less than \$12,500.;

h. That plaintiff is entitled to receive costs and disbursements in connection with this proceeding and such other and further relief as to the Court may deem just and proper.

STROOCK & STROOCK & LAVAN

by

R. J. S. Lavan
(A member of the firm)
Attorneys for Plaintiff
61 Broadway
New York, New York 10006
Tel. (212) 425-5200

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

14 A

----- x

MARVIN STERN, : ANSWER TO
Plaintiff, : AMENDED COMPLAINT
-against- : 72 Civ. 143
SATRA CORPORATION, SATRA : Defendants Demand
CONSULTANT CORPORATION, IBM : A Jury Trial
WORLD TRADE CORPORATION and :
RALPH STAFFORD, :
Defendants. :
----- x

Defendants Satra Corporation ("Satra") and
Satra Consultant Corporation ("Consultant"), by their
attorneys, Spear and Hill, answering the complaint herein:

AS AND FOR THEIR ANSWER TO
THE FIRST COUNT AGAINST
SATRA AND CONSULTANT:

1. Admit that plaintiff seeks to establish jurisdiction by diversity of citizenship; admit the allegations contained in paragraph "1" of the amended complaint that defendant Ralph Stafford is a citizen of the State of New York and that defendants Satra and Consultant are corporations organized under the laws of and with their principal places of business in the State of New York; admit upon information and belief the allegations contained in paragraph "1" of the amended complaint that plaintiff is a citizen of the State of California; and deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the amended complaint with respect to

15 A

the state of incorporation and principal place of business of IBM World Trade Corporation ("IBM").

2. Admit the allegations contained in paragraph "2" of the amended complaint.

3. Admit the allegations contained in paragraph "3" of the amended complaint, except state that the question of actual controversy between the parties involves issues of fact and law as appear below.

4. Deny the allegations contained in paragraph "4" of the amended complaint, except admit that on or about August 31, 1971, defendant Satra forwarded a memorandum to plaintiff, a copy of which is attached hereto as Exhibit "A", proposing an arrangement whereby Satra would pay to plaintiff 50% of gross revenues received by Satra from IBM after deduction of certain expenses, under conditions described in paragraph B of such memorandum. Defendants further admit that on or about September 1, 1971, plaintiff forwarded a memorandum to Satra, a copy of which is attached hereto as Exhibit "B".

5. Deny the allegations contained in paragraph "5" of the amended complaint, except admit that on or about September 22, 1971, defendant Consultant guaranteed any obligations owing to plaintiff by Satra as a result of the documents attached hereto as Exhibits "A" and "B". A copy of such guarantee is attached hereto as Exhibit "C".

6. Deny the allegations contained in paragraph "6" of the amended complaint, except admit that plaintiff attended certain meetings with representatives of IBM and these answering defendants in connection with the sale by IBM of data processing equipment in the Union of Soviet Socialist Republics ("USSR").

7. Deny the allegations contained in paragraph "7" of the amended complaint, except admit that plaintiff attended certain meetings with representatives of these answering defendants, IBM and the USSR in connection with the sale by IBM of data processing equipment in the USSR.

8. Deny the allegations contained in paragraph "8" of the amended complaint, except admit that on or about September 22, 1971, IBM and Satra executed an agreement by which Satra and its subsidiaries were appointed IBM's consultant and financial representative with respect to sales by IBM of IBM Data Processing Machines, as therein defined, in the USSR. A copy of such agreement is attached hereto as Exhibit "D".

9. Deny the allegations contained in paragraph "9" of the amended complaint, except admit that on or about September 22, 1971, IBM and Consultant executed an agreement substantially identical in terms to those contained in the agreement referred to in paragraph "8" herein, by which Consultant was appointed IBM's consultant and financial representative with respect to sales by IBM of IBM Data Processing Machines, as therein

defined, in the USSR. A copy of such agreement is attached hereto as Exhibit "E". These answering defendants further admit that on or about September 22, 1971, Satra executed a guarantee to IBM of the performance by Consultant of the terms of the agreement (Exhibit "E") between IBM and Consultant. A copy of such guarantee is attached hereto as Exhibit "F".

10. Admit the allegations contained in paragraph "10" of the amended complaint.

11. Admit the allegations contained in paragraph "11" of the amended complaint.

12. Deny the allegations contained in paragraph "12" of the amended complaint, except admit that in accordance with the provisions of the documents attached hereto as Exhibits "A", "B" and "C", these answering defendants paid plaintiff \$12,500 on or about October 12, 1971.

13. Deny the allegations contained in paragraph "13" of the amended complaint, except admit that representatives of these answering defendants indicated to plaintiff, on or about November, 1971, that the documents attached hereto as Exhibits "A", "B" and "C" did not constitute a valid and binding agreement between the parties.

14. Deny that the allegations contained in paragraph "14" of the amended complaint fully, accurately or completely set forth the position of these answering defendants with respect to the relationship between

plaintiff and such defendants except admit that these answering defendants do not recognize any legal obligations to plaintiff in connection with the documents attached hereto as Exhibits "A", "B" and "C".

15. Deny the allegations contained in paragraph "15" of the amended complaint, except admit that these answering defendants, by their attorneys, have stated that they do not recognize any legal obligations to plaintiff in connection with the documents attached hereto as Exhibits "A", "B" and "C".

16. Admit the allegations contained in paragraph "16" of the amended complaint.

17. Deny the allegations contained in paragraph "17" of the amended complaint, except admit that although plaintiff has demanded further sums from these answering defendants, plaintiff has received no further payment from such defendants.

18. Deny the allegations contained in paragraph "18" of the amended complaint, except admit that certain sums may become due and payable to Consultant from IBM pursuant to the agreement executed by them.

19. Deny the allegations contained in paragraph "19" of the amended complaint.

20. Deny the allegations contained in paragraph "20" of the amended complaint, except admit that an actual controversy now exists as to the legal rights, relations and duties between plaintiff and these answering defendants under the documents attached hereto as Exhibits "A", "B" and "C".

AS AND FOR THEIR ANSWER
TO THE SECOND COUNT AGAINST
IBM AND RALPH STAFFORD:

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "21" of the amended complaint.

22. Deny the allegations contained in paragraph "22" of the amended complaint.

23. Deny the allegations contained in paragraph "23" of the amended complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE, DEFENDANTS SATRA AND CONSULTANT ALLEGE:

24. That the purported consideration for the execution by these answering defendants of the documents attached hereto as Exhibits "A" and "C" was plaintiff's alleged exclusive ability to induce IBM to enter into an agreement with Satra or Consultant similar to Exhibits "D" and "E" and plaintiff's promise to induce IBM to enter into such an agreement.

25. That plaintiff had no exclusive ability or any ability to induce IBM to enter into such an agreement and did not induce IBM to enter into Exhibit "D" or "E" with these answering defendants.

26. That the agreements entered into between IBM and Satra, and then between IBM and Consultant, were not executed as a result of the efforts of plaintiff, and were executed regardless of plaintiff.

27. That by reason of the foregoing, the documents attached hereto as Exhibits "A", "B" and "C" are not valid and binding because of want and failure of consideration.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE, AND AS AND FOR A FIRST, SEPARATE AND DISTINCT COUNTERCLAIM, DEFENDANTS SATRA AND CONSULTANT ALLEGE:

28. That this Court has ancillary jurisdiction of this counterclaim pursuant to Rule 13(a) of the Federal Rules of Civil Procedure.

29. That defendants Satra and Consultant re-allege the allegations contained in paragraphs "4", "5", "8" through "12", "16" and "17" herein with the same force and effect as if set forth herein.

30. That on or about August 15, 1971, and at various times thereafter until September 1, 1971, plaintiff made certain statements and representations to defendants Satra and Consultant including, but not limited to, the following:

(a) That plaintiff was influential with IBM;

(b) That plaintiff had helped to convince IBM to enter into the Soviet market;

(c) That plaintiff had also convinced IBM, to retain Satra or Consultant as IBM's consultants with respect to its venture into the Soviet market;

(d) That IBM would retain Satra or Consultant only if plaintiff were included in the project and working with or for Satra or Consultant;

(e) That plaintiff's ability in systems management was a reason for IBM's requirement that plaintiff be involved in the performance of the potential consultancy and representation agreement.

31. That the statements and representations specified in paragraph "30" herein and other statements and representations made by plaintiff to defendants Satra and Consultant were false statements of material facts.

32. That at the time plaintiff made the false statements and representations specified in paragraph "30" herein, and other statements and representations which were false, he knew such statements were false and made such statements with the intent to deceive defendants Satra and Consultant and to induce defendants Satra and Consultant to enter into an agreement with plaintiff pursuant to which plaintiff would participate in the profits accruing to such defendants, under a consulting agreement between IBM and such defendants.

33. That defendants Satra and Consultant believed that the false statements and representations specified in paragraph "30" herein, and other false statements and representations made by plaintiff, were true and, in reliance thereon, were induced to and did execute the documents attached hereto as Exhibits "A" and "C".

34. That defendants Satia and Consultant would not have executed such documents had they known that the statements and representations made by plaintiff hereinabove referred to were false.

35. That in reliance on the truth of the statements and representations made by plaintiff, and in accordance with the provisions of the documents attached hereto as Exhibits "A", "B" and "C", defendants Satra and Consultant paid plaintiff \$12,500 on or about October 12, 1971.

36. That defendants Satra and Consultant incurred expenses in the amount of \$3,660.61 to insure plaintiff's presence at certain meetings concerning the potential agreement between IBM and Consultant.

37. That on or about October 18, 1971, defendants Satra and Consultant discovered the falsity of the statements and representations made by plaintiff to such defendants.

38. That defendants Satra and Consultant notified plaintiff within a reasonable time after their discovery that the statements and representations made by plaintiff to such defendants were false and that they did not consider the documents attached as Exhibits "A", "B" and "C" to be a valid and binding agreement and guarantee.

39. That by reason of the foregoing, defendants Satra and Consultant are entitled to rescission of the documents attached as Exhibits "A", "B" and "C" and,

as part of such rescission, the return by plaintiff of the \$12,500 paid to him by such defendants as set forth in paragraph "35" herein and the expenses of \$3,660.61 incurred by defendants as set forth in paragraph "36" herein.

AS AND FOR A SECOND SEPARATE
AND DISTINCT COUNTERCLAIM,
DEFENDANTS SATRA AND CONSULTANT
ALLEGE:

40. That defendants Satra and Consultant reallege the allegations contained in paragraphs "28" through "38" herein.

41. That by reason of the foregoing, defendants Satra and Consultant are entitled to damages in the amount of \$16,160.61, representing \$12,500 paid to plaintiff as set forth in paragraph "35" herein and expenses of \$3,660.61 incurred as set forth in paragraph "36" herein.

AS AND FOR A THIRD AFFIRMATIVE
DEFENSE, AND AS AND FOR A THIRD
SEPARATE AND DISTINCT COUNTERCLAIM,
DEFENDANTS SATRA AND CONSULTANT
ALLEGE:

42. That defendants Satra and Consultant reallege the allegations contained in paragraphs "28" through "38" herein.

43. That defendants Satra and Consultant were induced to and did execute the documents attached hereto as Exhibits "A" and "C" because of a mistaken belief caused by plaintiff's misrepresentation of material facts as more particularly alleged in paragraph "30" herein.

44. That by reason of the foregoing, defendants Satra and Consultant are entitled to rescission of the documents attached as Exhibits "A", "B" and "C" and as part of such rescission, a return by plaintiff of the \$12,500 paid to him by such defendants as set forth in paragraph "35" herein and the expenses of \$3,660.61 incurred by defendants as set forth in paragraph "36" herein.

WHEREFORE, defendants Satra and Consultant demand that the Court adjudge:

(a) That the documents attached hereto as Exhibits "A" and "B" do not constitute a valid and binding agreement between plaintiff and defendants Satra and Consultant.

(b) That the document attached hereto as Exhibit "C" does not constitute a valid and binding guarantee by defendant Consultant or defendant Satra.

(c) That defendants Satra and Consultant were induced by fraud to execute the documents attached hereto as Exhibits "A" and "C".

(d) That defendants Satra and Consultant were induced by misrepresentation of material facts to execute the documents attached hereto as Exhibits "A" and "C".

(e) That any agreement entered into between plaintiffs and defendants Satra and Consultant be rescinded.

(f) That plaintiff is not and will not be due any monies from defendants Satra and Consultant by virtue of the documents attached hereto as Exhibits "A", "B" and "C".

(g) That plaintiff be ordered to return to defendants Satra and Consultant the amount of \$12,500 paid to plaintiff by such defendants on or about October 12, 1971.

(h) That plaintiff be ordered to pay to defendants Satra and Consultant damages for expenses incurred by such defendants in the amount of \$3,660.61.

(i) That defendants Satra and Consultant have such other different and further relief, decree or judgment as may be necessary to make effective the rights declared herein, together with attorneys' fees and the costs and disbursements of this action.

SPEAR and HILL

By J.T.R.
A Member of the Firm

Attorneys for Defendants
Satra Corporation and
Satra Consultant Corporation
Office and P.O. Address
63 Wall Street
New York, New York 10005
Tel. No.: (212) 344-6200

REQUESTED JURY CHARGE NO. 11

If you have made findings in favor of Satra with respect to each of the foregoing elements, you must find that Satra Corporation is entitled to rescind its agreement with Dr. Stern, that the memoranda exchanged between Satra and Dr. Stern dated August 31, 1971 and September 1, 1971, respectively, do not constitute a binding agreement, and that Satra has no obligations to Dr. Stern under the documents in question.

There is another theory upon which Satra is entitled to rescind the agreement in question. That theory is very similar to the theory based on fraudulent misrepresentations which I have just discussed, except in one very important way. That difference concerns the element of "intent to deceive."

You will recall that I previously told you that you had to find that Dr. Stern either knew his statements were false, or did not know whether they were true or false, in order to find that he intended to deceive Satra. Under the second theory of rescission, you do not have to make such a finding. Innocent misrepresentation is sufficient. Under this theory, if a false statement is made which induces a party to enter into a contract, that contract can be rescinded

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even if the person making the false statement acted innocently. Therefore, if you find that Dr. Stern made false statements of material facts on which Satra Corporation relied in executing the documents in question, you must find that Satra Corporation is entitled to rescind those documents, and has no obligations thereunder. This is true even if you find that Dr. Stern did not know that the statements he was making were false.

Seneca Wire & Mfg. Co. v. A. B. Legg & Co., Inc., 247 N.Y. 1, 159 N.E. 700 (1928);

Bloomquist v. Farson, 222 N.Y. 375 (1918).

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

MARVIN STERN,

Plaintiff,

72 Civ. 143

-against-

SATRA CORPORATION and SATRA
CONSULTANT CCRPQRATION,

MEMORANDUM

Defendants.

X

APPEARANCES:

STROOCK & STROOCK & LAVAN, ESQS.
61 Broadway
New York, New York 10006
Attorneys for Plaintiff

SPEAR AND HILL, ESQS.
One State Street Plaza
New York, New York 10004
Attorneys for the Defendants

LASKER, D.J.

Marvin Stern is a mathematician-engineer who has been employed at responsible levels in both the public and private corporate sectors of defense production. Satra Corporation and Satra Consultant (jointly "Satra") are companies in the business of facilitating large scale international trade transactions. In early '71 Stern and Satra commenced discussions looking towards joint activity in which Stern would secure clients for Satra, negotiate agreements on behalf of Satra, and assist in servicing the clients with whom agreements were reached.

The talks between the parties were conducted for Satra primarily by its President and controlling stockholder, Ara Oztemel, and by Stern for himself. They concerned the possibility of Stern securing clients for Satra in the widening trade between the Soviet Union and the United States.

Stern represented to Oztemel that he might be able to secure IBM and Stromberg Carlson as Satra clients, and commenced negotiations with IBM on Satra's behalf while also negotiating the terms of his own arrangements with Satra. From the outset of their discussions Stern and Oztemel considered two possible forms of agreement

between Stern and Satra: the first that Stern receive a flat salary (\$7,500. per month was the amount considered); the second that the parties split revenues as partners on an agreed percentage basis. The financial objectives of the parties differed. Stern was primarily, indeed at the time almost exclusively, concerned with a source of current income, not only to provide for living expenses for himself and his family, but also to cover the cost of his required move from California, where he then resided, to New York. Satra on the other hand was anxious to avoid putting up money in advance of receiving revenues from IBM Soviet business, and wished also to recoup the expenses (aside from any payments to Stern) which it would necessarily incur in servicing the IBM account.

A series of draft agreements were prepared which culminated in a written offer from Satra to Stern dated August 31, 1971 (Exhibit C), which he accepted subject to the important condition noted below. The proposal offered Stern two choices: The first, "50 percent of gross revenues received from IBM and Stromberg-Carlson by Satra after deduction of expenses on an annual basis as per attached schedule", the second an advance of \$6,250. per month against a minimum of \$50,000. of net profits (less expenses as above) plus 30% of further

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net profits. He chose the former, subject to the clarifying condition specified in the addendum written and signed by Oztemel at Stern's insistence at the end of the agreement: "In alternate one (I) any retainers received will be divided 50-50. Other income as above schedule." Together the provisions of the contract read:

"I.

A. No financing by Satra.

B. Your compensation will be 50 percent of gross revenues received from IBM and Stromberg-Carlson by Satra after deduction of expenses on an annual basis as per attached schedule. These commissions will be payable for all amounts accrued by Satra during the term of any agreement signed by Satra with IBM and S-C plus all commissions that may be earned from sales then under negotiation. Commissions will also be paid during the term of any renewal of such agreement provided Stern continues to devote such time necessary to service the agreement. These commissions will be paid quarterly after an amount equal to expenses has been recouped in each year.

C. All expenses for the project will be advanced by Satra to be recouped out of earnings, if any, including your incidental expenses which will not include amounts attributable to your commuting from Los Angeles to New York. All foreign travel by you, in connection with this venture, must be approved by Satra.

D. All personnel to be hired or assigned by Satra to the project will be Satra's sole responsibility.

* * *

SCHEDULE

<u>Incremental Annual Revenue</u>	<u>Incremental Annual Expenses</u>
\$250,000	\$100,000.
\$250,000	50,000
\$250,000	25,000
\$250,000	15,000
\$1,000,000	10,000

In alternate one (I) any retainers received will be divided 50-50,
Other income as above schedule."

On September 22, 1971, as a result of Stern's negotiations on behalf of Satra, Satra and IBM executed a contract (Exhibit H) which provided that 1) for its services to IBM, Satra was to receive a commission of 3 1/2% of IBM sales of Data Processing Machines to or in the USSR and 2) "upon execution of this agreement the Company [IBM] shall advance a retainer to the Consultant [Satra] of \$25,000.00 and ninety days thereafter an additional \$25,000. These advances shall be charged against future commissions." IBM has made the two \$25,000. payments to Satra. Satra paid 1/2 of the first installment to Stern, without any deduction or reservation. As a result of the falling out which caused this law suit, Satra has refused to pay Stern any part of the second \$25,000., or of any other monies received by it

from IBM.

In late 1973 (after the commencement of this suit) Satra and IBM negotiated a new agreement to replace the 1971 contract. (Exhibit H, effective September 1, 1973) Stern and his counsel were informed that the negotiations were occurring but took no part in them. Stern asserts in this suit that he is entitled to share in the revenues Satra has received or will receive from both the 1971 and 1973 agreements between Satra and IBM.

The issue of liability was tried to a jury which found in Stern's favor. One of Satra's defenses before the jury was that no contract existed because of a failure of a meeting of the minds between Stern and Satra on the subject of what expenses were deductible by Satra under the Schedule to Exhibit C before making payments to Stern, a subject which Satra argued was critical to the formation of a contract.

The issues of damages was tried to the court alone. The questions on which disposition of the case depends are:

1. Did the jury, by its verdict, decide how Satra's expenses should be deducted under the Schedule to Exhibit C, and;

2. If not, how should they be deducted?
3. Is the 1973 contract between IBM and Satra a renewal, within the meaning of the Stern-Satra agreement, of the IBM-Satra 1971 contract, so that Stern is entitled to share in revenues of both?
4. If the answer to the last question is in the affirmative, is Satra entitled to make expense deductions from either or both categories of payments provided for under the 1973 agreement with IBM before making payments to Stern?
5. Is Satra entitled to any mitigation of damages?

1. The Significance of the Jury Verdict

A principal question put to the jury was whether the minds of the parties had met as to what expenses were deductible under the terms of the Schedule to the agreement of August 31 (Exhibit C). Stern argued to the jury that Satra was entitled to deduct expenses of a given year only against the revenues of that year, and not from revenues of a succeeding year; in other words, that no carry-over was authorized. Satra argued vigorously to the jury on optional theories:

1. That there was no meeting of the minds between the parties as to the correct construction of the

Schedule to Exhibit C; that the Schedule's terms were a material part of the contract and ergo there was no contract between the parties; and

2. That if there was a contract between the parties, then under the Schedule Satra was entitled to be reimbursed for an earlier year's expense out of revenues of a later year if the earlier year's revenues had been insufficient to permit reimbursement in the first instance.

Stern now contends that because the jury found in his favor on the issue of liability, its verdict necessarily implies that it also found in his favor as to his construction of the Schedule's terms. While it is true that the jury's verdict indicates that it determined that there was a meeting of the minds between the parties, it does not follow that the verdict signified a finding that Stern's construction of the Schedule's effect was correct. The verdict could just as well mean that the jury found either a) that the terms of the Schedule were not a material part of the contract, or b) that Satra's construction of the application of the Schedule was correct. Stern's contention that the issue was foreclosed by the jury verdict must therefore be rejected. The question must, therefore, be determined by the court.

2. The Meaning of the Schedule to Exhibit C

We find that the parties intended that Satra should not have a carry-over right under the terms of the Schedule. The extensive and detailed testimony of Stern on that point (Tr. 83-90) is highly persuasive and was unrefuted in its essentials by any defense witness. From it may be drawn the following scenario: In the negotiations leading up to the execution of the Stern-Satra agreement (Exhibit C), Oztemel's associates argued that Satra should be reimbursed for its sales-associated expenses. Stern countered that in that event he should have the right to audit Satra's books. Satra's representatives (Mott, its attorney, and Herman, its accountant) demurred at the suggestion that Stern should audit Satra's books and proposed that in lieu of auditing actual expenses, the parties should agree in advance to a schedule of expense deductions which would not represent actual expenses but rather would be a "function of revenues" (Tr. 84). The Satra negotiators then presented a proposed Schedule showing columns for expenses and for revenues. As Stern put it:

"... they said it would work the following way: If there -- if there are no revenues coming in, there is no expense reimbursement. As the revenues begin to come in, we would share, according to the

agreement, but my share would be reduced somewhat and theirs would go up somewhat, by virtue of them having to be reimbursed for expenses according to this schedule vis-a-vis revenues." (Tr. 85)

Stern then traced the history of the Schedule's critical phrases "Incremental Annual Revenues" and "Incremental Annual Expenses" which headed the two columns of the Schedule. He testified that Satra's representatives proposed the word "annual," because annual reapplication of the Schedule was to Satra's advantage since "if it were not annual, then after a while there is no additional expense reimbursement. But at the beginnings [that is at the earlier levels of the Schedule] there are higher expense reimbursements to they [Satra] wanted the schedule to be reapplied annually." (Tr. 86)

The word "incremental" was introduced by Stern who stated (Tr. 89):

"Once we discussed it enough so we were sure we understood each other, I said, you know, in order to avoid any confusion in mathematics, there are a couple of words that are applicable here. For the columns they showed me, I said these should be labeled in incremental annual expenses against incremental annual revenues."

It is apparent from Stern's testimony that he suggested the use of the word "incremental" to signify

that deductions of expenses against revenues were to be on a cumulative basis as to expenses only, and not as to years; that is, for example, that \$100,000. was deductible against the first \$250,000. of revenues in a given year, \$150,000. against the first \$500,000. of revenues in a given year, etc. There is no suggestion that the word "incremental" was intended to provide that expenses not reimbursed in one year could be carried over to be reimbursed out of later revenues, and we find that the parties intended no right of carry-over.

3. Status of the IBM-Satra 1973 Contract

The Stern-Satra contract (Exhibit C) entitles Stern to "all amounts accrued by Satra during the term of any agreement signed by Satra with IBM and S-C ..." as well as to payments "... during the term of any renewal of such agreement ...". The parties disagree whether the IBM-Satra 1973 contract (Exhibit L) constitutes a "renewal" of the IBM-Satra 1971 contract (Exhibit H), within the meaning of the Stern-Satra agreement (Exhibit C).

We find that the 1973 agreement does constitute a renewal of the 1971 agreement as contemplated and intended by Stern and Satra in their contract. Satra argues that under New York case law a second agreement between the same parties -- IBM and Satra here --

relating to the same subject matter, does not constitute a "renewal" unless the terms of the second are "the same" as the first. That definition misreads the decisions and in particular misreads the intent of the parties in this case. It is important to recall that the significant negotiations leading to the Stern-Satra agreement (Exhibit C) took place between laymen, Oztemel and Stern. Their testimony establishes that it was their intention that Stern should continue to receive his share of IBM commissions so long as Satra was being compensated by IBM for substantially the same services which Oztemel and Stern then expected Satra to perform for IBM: that is, the services specified in the 1971 IBM-Satra contract.

This view is supported by the language of the Stern-Satra agreement itself. The only condition it imposes on the payment of renewal commissions to Stern is that "Stern continue[s] to devote such time [as is] necessary to service the agreement." The uncomplicated meaning of the clause is that as long as Satra keeps on doing what it has been doing for IBM and as long as Stern does his part (or is available and willing to do his part), he will receive his share of commissions.

The inquiry then must be whether Satra was ex-

pected under the 1973 agreement to perform essentially the same services for IBM as under the 1971 agreement. We find that it was. As Bertram H. Witham, Treasurer of IBM testified at the court trial, both under the first and second agreements Satra was to provide IBM with expertise and with administrative services including, for example, office space in Moscow, arrangements for visas, transportation, appointments, provision of conference rooms, seminars, translators, etc. (Tr. 4/17/74, 47, 50, 52, 58-59) Both agreements also made provision for a major role for Satra in barter transactions, the first obligating Satra to perform such transactions, the second contemplating that it would do so. We do not agree that the restructuring of compensation arrangements or readjusting the term prevented the second IBM-Satra agreement from being a renewal of the first within the meaning and intention of the Stern-Satra contract. If the argument were accepted, it would follow that Stern intentionally entered an agreement with Satra by which Satra could liquidate his rights merely by renegotiating these items with IBM. There is no evidence to support the conclusion that Stern thus placed his fate in Satra's hands.

Among other cases, Satra cites Master Institute

of United Arts v. United States, 167 F.2d 955 (2d Cir. 1948) as supporting its contention that renewal does not occur as a matter of law unless the terms of the second agreement are identical with those of the first. To the contrary, Judge Augustus Hand wrote in United Arts that the "determining factor" is "the extent of the modification ..." (at page 957), and that the test, "like many other legal standards is a matter of degree ...". The United Arts rule makes particularly good sense where -- as here -- the choice of the term "renewal" (written into the agreement by hand) was made not by lawyers or professionals, but by lay principals. But even if the term "renewal" be narrowly or technically construed, the issue nevertheless goes against the defendants. Black's Law Dictionary, 4th Edition, includes among the definitions of "renewal", "the substitution of a new right or obligation for another of the same nature", and "a change of something old to something new". Clearly the 1973 agreement falls within those definitions. Moreover, the word "renew" is defined by Black to mean "to replace", which is the very term Oztemel used when he wrote to IBM on June 26, 1973 (Exhibit HHHH) describing the 1973 agreement as one "... to replace the existing contract between our firms."

4. Amounts Due Stern Under the 1973 IBM-Satra Contract

The parties are in agreement as to amounts due Stern under the first IBM-Satra contract. They differ as to payments he is entitled to receive under the second. The issue turns on whether Satra is entitled to deduct its expenses from revenues received by it under the 1973 agreement. Stern argues that the expenses are not deductible because they constitute "retainers received" within the meaning of the handwritten addendum to the Schedule to Exhibit C which, by the terms of the addendum are to "be divided 50-50" without deduction.

Satra contends that the phrase "any retainers" in the addendum was meant to refer only to cash down payments Satra might receive from IBM on the signing of the IBM-Satra agreement, and nothing more. It argues that the term "retainer" in the addendum means an initial payment for services to be rendered rather than, as Stern claims, periodic payments made for the right to continuing services. We find that Satra's version is what the parties intended. Moreover definitions of the term "retainer" favor Satra.

Black's Law Dictionary, 4th Edition, defines "retainer" as "act of the client in employing his attorney or counsel, and also denotes the fee which the

client pays when he retains the attorney to act for him ...". Ballantine's Law Dictionary (1948) defines the term as "... the preliminary fee given to secure the services of the solicitor or attorney and induce him to act for the client." But we need not hang on legal definitions. Looking to the circumstances which caused the writing of the addendum leads to the same conclusion. As noted earlier, at the time the Stern-Satra agreement (Exhibit C) was being negotiated, Stern's primary concern -- which amounted to an imperative for him -- was to make sure that he would receive "current income" (a euphemism for cash on the barrelhead) for landing the IBM-Satra agreement. As originally transmitted to Stern, the Schedule to Exhibit C would have had the effect of allowing Satra to deduct its expenses from any revenues it received from IBM. (Exhibit C, Paragraph I, B and C, and Schedule to Exhibit C) This feature of the proposal upset Stern greatly so that he remonstrated to Oztemel (Tr. 98-99):

"... I said, 'I need current income. This new agreement you are offering, even for the 50/50 sharing, that is going to be reduced by the expense reimbursement schedule. I am not that worried reducing the commission by that expense reimbursement schedule because those are future income also, but in order to be able to live, I have to look to current income, the

retainers or the advances and I don't want those to be reduced by this expense reimbursement schedule.'

He said absolutely I am right. He said, 'Now, that reimbursement schedule really is logically associated with expenses on sales and the future commissions.'

He said, 'There should not be any expense reimbursement applicable to the current income like the retainers.'

I said, 'Wait a minute. You say that. Write it down. Sign your name.'

He said, 'Sure.'

He then added on the bottom a reference to this discussion and we signed the agreement."

The 1973 agreement provides that Satra shall receive from IBM (a) "... a monthly sum of \$16,667." as a financial consultant and for providing administrative services and (b) "... a monthly advance of \$9,350. ... in anticipation of payments to be made to World Trade [IBM] by the customer [USSR] under agreements between World Trade and the customer signed prior to the date of this agreement." The \$9,350. payments are refundable by Satra to the extent that IBM fails actually to receive payments from the USSR.

Stern argues that the \$16,667. installments are "retainers" within the meaning of the addendum to the Schedule because they are regular payments in considera-

tion for Satra's services. We have already ruled, however, that the parties intended the words "any retainers" in the addendum merely to mean payment of cash on the barrelhead by IBM to Satra at the outset of their relations, and not periodic or regular payments for services to be rendered.

Stern also claims that the \$9,350. installments are not subject to expense deduction. His theory is that the \$9,350. installments under the 1973 IBM-Satra agreement should be treated in the same way as the original \$25,000. payment by IBM to Satra (which Satra shared with Stern without deduction) because both the \$9,350. installments and the \$25,000. installments are described in the controlling agreements as advances against commissions. The difficulty with this argument too is that it/runs headlong into our ruling that the parties intended the words "any retainers" in the addendum to be limited in the manner we have described -- that is to the first cash down payment to be made by IBM to Satra.

In sum, Stern is entitled under the 1973 IBM-Satra contract to 50% of the gross revenue received by Satra after deduction of its expenses (on an annual non-carry-over basis) in accordance with Schedule C.

Satra suggests that because by the terms of the 1973 agreement Satra is contingently obligated to refund the

accumulated \$9,350. installments in December, 1976, such amounts as are payable to Stern by Satra out of the \$9,350. installments should be held in escrow until it is determined whether Satra will actually be required to make any refund to IBM. Since Stern will be entitled to substantial monies from the \$16,667. installments and will share Satra's contingent obligation to make refunds to IBM from the \$9,350. installments, it is reasonable that the latter sums be held in escrow for the comparatively short period until the end of 1976 when it will be determined whether any such refund is actually required.

5. Mitigation of Damages

On the authority of Howard v. Daly, 61 N.Y. 362, 373-4 (1875) and Cornell v. T.V. Development Coip., 17 N.Y.2d 75, 268 N.Y.S.2d 29 (1966), Satra argues that if it has breached the contract then the damages payable to Stern should be reduced by the amounts which he earned or could have earned as a result of being freed from the obligations of his agreement with Satra. Authority is slender under New York law as to the applicable mitigation rules. Nevertheless, a framework can be seen through the mist:

1. "A person discharged from service must not remain idle but must accept employment elsewhere if

offered." Howard v. Daly, supra.

2. The burden is on the defendant to establish that the defendant earned or could have earned monies as the result of its breach. (Haughey v. Belmont Quadrangle Drilling Corporation, 284 N.Y. 136, 142 (1940) and Cornell v. T.V. Development Corp., supra.

3. If there is no saving, or potential earning, by the plaintiff as a result of being relieved of his contract with the defendant, the plaintiff is entitled to recover full damages without mitigation. Weisberg, et al., v. Art Work Shop, 226 App. Div. 532, 235 N.Y.Supp. 8 (1st Dept. 1929); 5 Corbin on Contracts, §1038 (1964 Edition).

Stern contends that Satra has failed to meet its burden of proving that as a result of its breach he was freed to earn monies that he could not have earned if the breach had not occurred. His view of the matter is that the services which the contract required him to perform were vague and indefinite, and did not specify that he was obliged to devote a particular period of time to Satra or to IBM's business. It is his theory that his opportunities to work for other clients were no greater after the breach than they were before. This is an oversimplification of the evidence.

First, the Stern-Satra contract (Exhibit C, Para-

graph I, B) specifies that Stern was to receive commissions on any renewal agreement "provided Stern continues to devote such time necessary to service the agreement." From the requirement thus imposed as to a renewal agreement, it is reasonable to infer that Stern was also obliged to devote "such time as is necessary" to service the original contract; in any event the larger part of the subject matter of this case is the renewal contract itself.

Second, Stern admitted on cross-examination (Tr. 299-300) that there were significant services which he was expected to perform in connection with ^{the} Satra-IBM (or Stromberg) agreement:

"I was to exert my best efforts to see that there would be an agreement reached between IBM, Stromberg and Satra. I was to continue in the discussions and negotiations between the parties.

After agreements between the client and Satra, since I was a partner in the venture here, it didn't describe specific actions I was to perform, like if I were getting a salary to do this, but here I was to share in the revenues. Therefore, I was to exercise my initiative to assist wherever called upon, wherever I was able, to maximize the sales and profits. In particular, I was to continue to work with Satra, in helping to understand the needs of a technology-oriented firm, of the needs of the customer, the Soviets, in the use of the products, if I were able.

And I would similarly be a communicator, the other way, help to explain why IBM had services Satra would be able to perform. Over and above this, Mr. Oztemel had made several suggestions to the effect that he wanted to introduce me to the Moscow scene to see if I could pick up some of that knowledge."

It is impossible mathematically to ascertain what portion of Stern's time the fulfillment of these duties would have required. Nevertheless, we are obliged to decide the question as a jury would be if the question had been put to them. We find as a fact that the fulfillment of Stern's obligations under his agreement with Satra had it not been breached would have demanded 15% of his working hours. We further find that the market for Stern's skills and expertise at and since the time of the breach has been such that full employment was available to him and that, accordingly, the breach by Satra freed him to secure clients for the 15% of his employable time which he would otherwise have had to devote to the Satra-IBM business.

This Memorandum constitutes the findings of fact and conclusions of law required by Rule 52(a) of the Federal Rules of Civil Procedure.

The parties shall submit proposed judgments together with Memoranda indicating the computations of

50 A

damages proposed to be awarded including the theory and computation by which damages should be mitigated.

Dated: New York, New York
January 17, 1975.

MORRIS E. LASKER

U.S.D.J.

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2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 MARVIN STERN, ;

6 Plaintiff, : ;

7 v. : 72 Civ. 143

8 SATRA CORPORATION, ETC., : ;

9 Defendants. : ;

10 -----x

11 June 19, 1975
12 9:45 a.m.

13 BEFORE:

14 HONORABLE MORRIS E. LASKER,

15 DISTRICT JUDGE

16 APPEARANCES:

17 STROOCK & STROOCK & LAVAN, ESQS.,
18 Attorneys for the plaintiff,
ALVIN K. HELLERSTEIN, FSQ., of counsel

19 SPEAR & HILL, ESQS.,
20 Attorneys for the defendants
ALBERT M. APPEL, ESQ., of counsel

21

22

23 * * *

24

25

2 (In chambers.)

3 THE COURT: It might be worth while for the
4 record to state where we are at, and I will do it more formally
5 when I read these notes, but this case, which is a contract
6 case, was tried as to liability before a jury and as to
7 damages before the Court. A memorandum opinion dated
8 Januar^y 17, 1975, was issued, which was intended to cover all
9 questions that were necessary to dispose of the case.

10 However, certain loose ends have been brought to
11 the attention of the Court by both sides in connection with
12 the framing of a judgment. They are somewhat complex and
13 it seemed to me, therefore, that they would either require
14 a further memorandum, which I was reluctant to get involved in,
15 or a statement on the record by the Court so that the parties
16 could thereafter be guided by the fixed views of the Court and
17 try to dispose of this matter as quickly as possible in
18 framing a judgment.

19 It is in that light that I read the following
20 remarks. It is not my intention to provoke a discussion here
21 or to ask the views of counsel or anything. I am giving my
22 ruling on the questions they have raised here, and except to
23 the extent that either of them thinks that anything I say is
24 predicated on a mistaken assumption or mistaken facts --
25 not that I believe there are any -- it's as if I had written

2 a memorandum and we will proceed accordingly.

3 Of course, at the conclusion of my statement here
4 I will be glad to discuss with you any questions that are not
5 clear.

6 I assume that each of you will purchase a copy of
7 this transcript and be able to work with it,

8 By memorandum dated January 17, 1975 we set forth
9 our findings of fact and conclusions of law as to the damages
10 to be awarded Stern and directed the parties to submit pro-
11 posed judgments together with memoranda describing the com-
12 putation of damages in accordance with our rulings.

13 The barrage of papers which accompanied the proposed
14 judgment has prevented earlier disposition of this lawsuit.

15 The following constitute our rulings on the issues
16 so punctiliously detailed in the submission of the parties:

17 1. Stern and Satra disagree as to the proper
18 application of the expense schedule, Exhibit C. Stern con-
19 tends if the schedule was intended to make Satra's expense
20 deduction a function of revenues, with Satra entitled to
21 deduct a larger proportion of "expenses" where revenues are
22 at a modest level, and a somewhat smaller proportion as
23 revenues increased in accordance with Plaintiff's Exhibits
24 C and EEEE. Satra takes the position it's entitled to a
25 minimal annual deduction for expenses of \$100,000 before any

2 revenues are shared because that is the first "plateau"
3 indicated in Exhibit C.

4 For example, under Satra's construction it would
5 be entitled to deduct a full \$100,000 of expenses even where
6 revenues are substantially less than \$250,000, against which
7 on schedule C the \$100,000 is matched, and which constitutes
8 the first revenue "plateau."

9 Under Stern's construction Satra would be entitled
10 to deduct only a pro rata share of expenses so that if, for
11 example, revenues were \$125,000, Satra would be entitled to
12 deduct only \$50,000, or 40 percent, in expenses.

13 In our January memorandum we noted that Stern's
14 testimony regarding the meaning of Exhibit C was highly
15 persuasive and that Satra did not have a carry-over right
16 under the terms of the schedule. We specifically credited
17 Stern's testimony that, and I am now reading from the transcript
18 page 85, "As the revenues begin to come in we would share
19 according to the agreement, but my share would be reduced
20 somewhat and theirs would go up somewhat by virtue of them
21 having to be reimbursed for expenses according to this
22 schedule, vis-a-vis revenues."

23 To the extent our earlier memorandum was unclear
24 with regard to the present dispute, we find as a fact that the
25 weight of the evidence favors Stern's position and that the

2 parties intended to apply the schedule on a pro rata basis
3 with no minimum expense deduction.

4 2. With regard to the provisions of the judgment
5 relating to mitigation of damages we rule as follows:

6 A. Stern's income for purpose of computing Satra's
7 offsetted mitigation for past, present and future years shall
8 be defined to include, one, any earned income as reflected
9 on his personal income tax returned; two, any other income
10 not so indicated which consists of different dividends
11 received from any corporation wholly owned or controlled by
12 him and members of his family, or any income of any
13 corporation wholly owned or controlled by him or members of
14 his family which is attributable to personal services rendered
15 by Stern in behalf of such corporation, less expenses incurred
16 in connection with such services.

17 Computation of corporate income or expenses
18 attributable to Stern shall be made in accordance with generally
19 accepted accounting principles. Where Stern or his family
20 do not wholly own or control a corporation in which he has an
21 interest, the calculation for corporate income and expenses
22 attributable to Stern shall be multiplied by the percentage
23 of his ownership.

24 3. Stern shall have no automatic right to share
25 payment received by Satra on account of any IBM contract

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2 which Satra may enter into after the expiration of the 1973
3 agreement; that is, the reason for such a ruling is, because
4 it questions whether any such contract, future contract may
5 constitute a "renewal" within the meaning of the 1971 agree-
6 ment has not been litigated in this suit.

7 I by no means intend by this ruling or these re-
8 marks to foreclose the possibility that such a future
9 agreement may constitute a renewal within the meaning of
10 the 1971 agreement, but I do not believe that it has been
11 litigated before me.

12 4. As to damages presently due and owing to
13 Stern from Satra, Stern is entitled to interest at the legal
14 rate, calculated as of the end of each quarter in which sums
15 due him accumulated in accordance with the pattern and structure
16 of the 1971 agreement.

17 5. As to damages to become due as Satra receives
18 revenues from IBM, Stern's share shall be computed and dis-
19 tributed on a quarterly basis in the manner described below.

20 A, Stern and Satra shall open a joint bank account
21 in their names. The withdrawal of funds from the account
22 shall be conditioned on the signatures of both Stern and an
23 authorized officer of Satra.

24 B, Satra shall forthwith deposit such portion of
25 damages presently due and owing to Stern as Stern is con-

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2 contingently obligated to return to Satra for refund to IBM in
3 accordance with the 1973 agreement.

4 C, as to future payments to Stern on account of
5 the IBM contract, Satra shall within ten days of the end of
6 each quarter deposit into the account the portion of Stern's
7 quarterly payment which he is contingently obligated to return
8 to Satra, because Satra is contingently obligated to return
9 it to IBM.

10 D, the funds deposited in the joint savings
11 account shall remain in the account until the contingent
12 obligation of Satra to refund the money to IBM either matures
13 or expires, and whatever is left in the account at such time
14 of course, and creditable to Stern, shall be returned to
15 Stern He shall be entitled to it, together with whatever
16 interest has accrued in the account. However, Stern shall
17 have the right at any time to withdraw funds from the account
18 to the extent that the amount of funds on deposit exceeds
19 the aggregate of the maximum amounts which Stern would have to
20 repay to Satra if Satra became obligated to refund moneys to
21 IBM.

22 In other words, if at any time Stern's liability,
23 whether by reduction or otherwise, is less than the amount
24 in the bank account, he shall have the right to withdraw
25 from the bank account the amount of such excess.

2 E, any funds due Stern from Satra which are not to
3 be deposited in the escrow account as provided in C above,
4 shall be paid directly to him within ten days of the end of
5 each quarter subject to the provision for mitigation of
6 damages as described below.

7 6. Mitigation of damages. A, Satra shall
8 deduct from Stern's damages presently due and owing its off-
9 set in mitigation as defined in paragraph 2 above, and I
10 believe I have numbered these items as we have gone along,
11 for all tax years through 1974.

12 B, Satra's offset in mitigation for payments to
13 become due to Stern in the present and future years shall
14 be calculated within 30 days of the filing of Stern's income
15 tax returns, provided, of course, that Stern makes such
16 information immediately available to Satra.

17 Therefore, I suppose we should say within 30 days
18 from Satra receiving from Stern the information contained
19 in such income tax returns.

20 The entire amount in mitigation shall be deducted
21 from the first payment due Stern subsequent to the calcu-
22 lations and from succeeding payments to the extent necessary,
23 because we recognize that theoretically at least the amount
24 might be greater than would be collectible in the first
25 instance.

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2 MR. HELLERSTEIN: Can we make the tax returns
3 available to Satra's lawyers with an understanding that they will
4 be received in confidence for the purpose of the mitigation
5 point?

6 THE COURT: I can't imagine why the defendants
7 would disagree with that. Yes, I will rule that the disclosure
8 of Mr. Stern's tax returns is to be made to counsel for Satra
9 under a protective order enjoining them from disclosing the
10 information to anyone else and to be used solely for the
11 purpose of making the computation necessary under this ruling.

12 MR. APPEL: Does that not include our client?

13 THE COURT: I think it not includes your clients.
14 I don't see how they would have any knowledge that would
15 assist you in going behind the returns themselves. If you
16 have any reason to doubt the accuracy of the returns, you
17 can take that up with Mr. Hellerstein. If you need any further
18 relief, you can come back to the Court. Yes, it does
19 include your clients.

20 MR. APPEL: May I also ask on the question of
21 mitigation, do I understand that the amounts are to be determined
22 solely from the various tax returns, personal and otherwise?
23 I'm not sure I understand where we are to get the information
24 about other corporate income, for example.

25 THE COURT: Let me say this:

2 Any information revelant under the ruling which
3 I have just made which is not contained in Mr. Stern's tax
4 returns should be added to the tax returns when those are given
5 to Satra's counsel in the form of an affidavit by Mr. Stern
6 or by a certified public accountant.

7 MR. MOTT: Such as tax exempt income which
8 would not be reflected elsewhere.

9 THE COURT: I don't think tax exempt income will
10 come within the material I testified.

11 MR. MOTT: Because you said dividends, I believe,
12 your Honor.

13 THE COURT: Dividends from his corporation. It's
14 hard for me to conceive how those could be tax exempt.

15 MR. MOTT: You're right.

16 THE COURT: But such as anything that is not covered
17 by the tax returns and is covered by my ruling, whatever it
18 may be.

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Dec 20 1975
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARVIN STERN,
Plaintiff,
-against-
SATRA CORPORATION and SATRA
CONSULTANT CORPORATION,
Defendants.

: 73 Civ. 143 (M.E.L.)

JUDGMENT

This action came on for trial before the court and a
jury, Hon. Morris E. Lasker, District Judge, presiding, and the
issues having been duly tried and the jury having duly rendered
its verdict for the plaintiff on the issue of liability, and a
supplementary trial of issues of damages having been duly heard
by the Court and a decision constituting findings of fact and con-
clusions of law on said issues having duly been rendered by the
Court on January 17, 1975 and thereafter more fully clarified on
June 19, 1975, June 27, 1975, September 8, 1975 and October 2, 1975,

It is ORDERED, ADJUDGED and DECREED:

1. That the plaintiff, Marvin Stern ("Stern") of 2492 Mandeville Canyon Road, Los Angeles, California 90049, recover (by payment as in Paragraph 9 set forth) of the defendants Satra Corporation and Satra Consultant Corporation, jointly and severally, each with offices at 475 Park Avenue South, New York, New York 10016 (hereinafter referred to jointly and severally as "Satra") the sum of \$131,862.86 computed in accordance with the following Schedule I and Stern shall have execution therefor:

Period Ending	Received by Satra	% to Stern	Amount from IBM	Rate per annum (\$10% per quarter)	Mitigation	ADJUSTED TOTAL Due Stern (Column 5+2+3-6)
<u>1971</u>						
12/31/71	^(a) \$25,000	50%	\$12,500	-	-	\$ 12,500
<u>1972</u>						
12/31/72	-	-	-	\$ 750	-	13,250
<u>1973</u>						
3/31/73	^(b) 7,024.17	30%	2,107.25	198.75	^(e) 3,437.50	13,111.50
6/30/73	^(b) 12,969.25	30%	3,890	196.78	-	17,705.00
9/30/73	-	-	-	258.09	-	17,444.15
12/31/73	^(c) 69,391.32	30%	20,817.40	261.96	-	38,543.51
<u>1974</u>						
3/31/74	^(d) 50,001.00	30%	15,000.30	578.15	^(e) \$ 2,100.00	51,195.95
6/31/74	50,001.00	30%	15,000.30	767.95	-	66,965.21
9/30/74	50,001.00	30%	15,000.30	1,004.48	-	82,951.99
12/31/74	50,001.00	^(f) 38%	18,985.21	1,244.55	-	103,199.74
<u>1975</u>						
3/31/75	50,001.00	30%	15,000.30	1,548.00	^(g) 4,612.50	115,135.53
6/30/75	50,001.00	30%	15,000.30	1,727.03	-	131,562.86

- (a) Second half of \$50,000 retainer paid to Satra by IBM World Trade Corporation ("IBM")
- (b) Earned Fees and Commission paid to Satra by IBM in March and April 1973 respectively
- (c) Earned Fees and Commission of \$2,723.34 paid to Satra by IBM in November 1973 plus 4 payments of a \$16,667 monthly sum (i.e. \$66,668) from IBM.
- (d) Three payments (i.e. quarterly total) of a \$16,667 monthly sum from IBM.
- (e) 15% of Stern's income for the previous year based on (i) income for personal services earned by Stern and reported in his personal income tax return and (ii) any other income not so reflected which consists of earnings of any business entity wholly owned or controlled by Stern or the members of his immediate family which are attributable to services (less expenses) rendered thereto by Stern and not distributed to Stern or to the members of his immediate family and as to any business entity not so wholly owned or controlled, that proportionate part of such earnings (less expenses) as the ownership or interest of Stern and the members of his immediate family bears to the total ownership or interest.
- (f) The expense formula provides that after Satra receives \$250,000 from IBM in any calendar year, Stern's share shall go from 30% to 40%. For October, the monthly sums received by Satra under the \$16,667 monthly fee and \$3,350 monthly advance go over the \$250,000 sum so that of the October \$13,467 paid to Satra, Stern is to receive \$5,651.61 and of the \$16,667 per month paid in November and December, Stern is to receive 40% or \$6,666.83 per month for a total of \$16,951.21 or a combined 3-month average of 11%. The same ratio is applied, in Schedule II to the monthly advances.

2. That plaintiff Stern has a contingent interest in and a contingent right to recover of Satra the sum of \$64,187.00 computed in accordance with the following Schedule II, which amount shall be forthwith deposited by defendants into the Special Account as provided in Paragraph 5 hereof.

II

<u>Period Ending</u>	<u>(1) Received By Satra</u>	<u>% to Stern</u>	<u>(2) Amount Due Stern</u>	<u>SCHEDULE OF DAMAGES</u>	<u>(4) Cumulative Total Due Stern (Column 4+2+3)</u>
				<u>(3) Interest at 6% per annum (.015 per quarter)</u>	
<u>1973</u>					
12/31/73	\$37,400	(a) 30%	\$ 11,220	-	\$ 11,220.00
<u>1974</u>					
3/31/74	28,050	(b) 30%	8,415	\$ 168.30	19,803.30
6/30/74	28,050	30%	8,415	297.05	28,515.35
9/30/74	28,050	30%	8,415	427.73	37,353.08
12/31/74	28,050	(c) 38%	10,659	560.37	48,577.45
<u>1975</u>					
3/31/75	28,050	30%	8,415	728.66	57,721.11
6/30/75	28,050	30%	8,415	865.82	67,001.93

(a) Four payments of a \$9,350 monthly advance from IBM to Satra.

(b) Three payments (i.e. quarterly) of the \$9,350 monthly advance from IBM to Satra.

(c) The expense formula provides that after Satra receives \$250,000 from IBM in any one calendar year, Stern's share shall go from 30% to 40%. For October 1974, the monthly sums received by Satra as advances of \$9,350 plus the monthly retainer fees of \$16,667 go over \$250,000 so that as of the \$9,350 paid to Satra, Stern is to receive \$3,170.50, and of the \$9,350 received in November and December, Stern is to receive \$3,740 or 40% each for a combined 3-month average of 30%.

3. That beginning with the payments received by Satra from IBM or its delagee for the third calendar quarter of 1975, and continuing for each calendar quarter thereafter for as long a period as Satra receives payments from IBM or its delagee pursuant to, or by reason of, their agreement effective as of September 1, 1973, Stern shall recover (by payment as in Paragraph 9 set forth) of Satra (subject to the provisions of Paragraph 4 hereof) the following sums, payable on or before the 10th day of each month succeeding the calendar quarter to which they relate, and Stern shall have execution therefor with respect to each such payment unless Stern's attorneys, Stroock & Stroock & Lavan, receive an affidavit from Satra's Treasurer attesting that Satra received no part of any such payments, during the preceding calendar quarter, from IBM or its delagee pursuant to or by reason of the aforesaid agreement:

a. For the months between July 1, 1975 and September 30, 1975, 30% of the monthly sums of \$16,667 and \$9,350 received by Satra from IBM, yielding \$7,805.10 per month, of which \$23,415.30 total:

(i) there shall be paid to Stern as provided in Paragraph 9 hereof\$15,000.30

and

(ii) there shall be paid into the Special Account, as established in Paragraph 5 hereof \$ 8,415.00

b. For October 1975, 30% of a portion of the monthly sums of \$16,667 and \$9,350 received by Satra from IBM, to the point where Satra receives \$250,000 for the calendar year 1975, and 40% of the remainder, yielding \$8,822.11 for the month of October; and for November and December 1975, 40% of said monthly sums received by Satra, yielding, \$10,406.80 per month, of which \$29,644.21 total:

(i) there shall be paid to Stern, as provided in Paragraph 9 hereof 18,335.21

and

(ii) there shall be paid into the Special Account, as established in Paragraph 5 hereof 10,659.00

c. For the first three quarters between January 1, 1976 and September 30, 1976,

30% of the monthly sums of \$16,667 and
\$9,350 received by Satra from IBM,
yielding \$7,805.10 per month, of which
\$23,415.30 total per quarter:

(i) there shall be paid to Stern as
provided in Paragraph 9, for the
first and third quarters\$15,000.30

and

(ii) there shall be paid to Stern, as
provided in Paragraph 9, for the
second quarter the sum of \$15,000.30
reduced by an amount equal to 15% of
Stern's income for 1975, as set out in
Paragraph 4 hereof to be
computed

and

(iii) there shall be paid into said
Special Account, as established
in Paragraph 5 hereof, per quarter..... 8,415.00

d. For October 1976, 30% of a portion of the
monthly sums received by Satra, to the
point where Satra receives \$250,000 for the

calendar year 1976, and 40% of the remainder,
yielding \$8,822.11 for the month of October;
and for November and December 1976, 40% of
said monthly sums receivable by Satra,
yielding, \$10,406.80 per month, of which
\$29,644.21 total:

- (i) there shall be paid to Stern's attorneys,
Stroock & Stroock & Lavan, to be held
by them in escrow in accordance with
Paragraph 4-c hereof, a sum equal to
15% of Stern's income for 1975 as set
out in Paragraph 4 hereof to be
computed
and
- (ii) there shall be paid to Stern, as
provided in Paragraph 9 hereof, the
sum of \$18,985.21 less the amount
deducted therefrom as in the preceding
subparagraph provided to be
computed
and
- (iii) there shall be paid into said
Special Account as established in

Paragraph 5 hereof \$ 10,659.00

e. For January 1977, 30% of the monthly sum

of \$16,667 received by Satra from IBM,

yielding \$5,000.10 payable to Stern's

attorneys, Stroock & Stroock & Lavan, to be

held by them in escrow in accordance with

Paragraph 4-c hereof 5,000.10

4. The following provisions shall govern how the payments provided in Paragraphs 1 and 3 above shall be subject to mitigation of damages:

a. There is appended hereto as Exhibit A a copy

of an affidavit from Stern sworn to on July 10

October 4, 1975 and a letter from Jeffrey

S. Geibelson a certified public accountant

of the firm of Zimmerman, Satin & Rogovin

dated July 22, 1975, based on which two papers,

the mitigable income of Stern for the years

1972, 1973 and 1974 shall be deemed 15% of

Stern's income as reported on his federal

personal income tax returns for those years*.

*None of the mitigation data furnished by Stern to Satra pursuant to this Paragraph 4-a shall be conclusive or binding and Satra may, if it deems it necessary, apply to this Court for further relief.

- b. On or before April 20, 1976, and April 20, 1977, Stern shall deliver to Spear & Hill, Satra's attorneys (or such other attorneys as Satra designates in writing), the following:
- (i) a copy of his federal personal income tax return for 1975 and 1976, respectively; and
 - (ii) for each said year an affidavit signed by Stern in the form of Exhibit A appended hereto, and if Satra has a good faith reason to believe that such affidavit is inaccurate Satra shall have the right to apply to this Court for discovery as to the basis thereof and the Court shall award to the prevailing party such costs, including attorneys' fees, as it may determine fair and reasonable in the circumstances;
 - (iii) for each said year, a statement in the form appended hereto as Exhibit B, from the certified public accountant responsible for preparing the federal income tax returns for any business entity wholly owned or

controlled by Stern or his immediate family.

Satra shall, within 30 days thereof, calculate and deduct from the next succeeding payments made payable to Stern (as directed herein), and not to the Special Account as provided in Paragraph 5 hereof, a sum or sums, in mitigation of damages for that year, equivalent to fifteen percent (15%) of:

(aa) the income for personal services earned by Stern as reflected on his personal income tax return for that year;

and

(bb) any other income not so reflected which consists of earnings of any business entity wholly owned or controlled by Stern or the members of his immediate family, attributable to services (less expenses) rendered thereto by Stern, and not distributed to Stern or to the members of his immediate family, and as to any

business entity not so wholly owned or controlled, that proportionate part of such earnings (less expenses) as the ownership or interest of Stern and the members of his immediate family bears to the total ownership or interest.

Said attorneys for Satra shall receive Stern's personal income tax returns in complete confidence, for their sole use without referral to Satra and only for the purpose of computation as stated above. Satra's attorneys shall have the right, however, to apply to the Court for permission to make such referral to Satra if Satra believes that consultation with respect to such information is necessary to Satra's determination as to whether it shall apply to the Court for relief pursuant to Paragraphs 4-a or 4-b hereof.

Stern shall notify said attorneys for Satra of the amount of any upward adjustment resulting from a government tax audit, in:

--Stern's income as reported on his personal federal income tax returns, and

--the taxable income of any business entity wholly owned or controlled by Stern or the members of his immediate family, for any year to which mitigable income pertains, within sixty (60) days after such determination, unless Stern determines to appeal the same in which event Stern shall so advise Satra's attorneys within sixty (60) days after the final determination affirming any upward adjustment.

c. The sum payable to Stern for the last calendar quarter of 1976 and for the month of January 1977, shall be paid to Stern's attorneys, Strock & Srock & Lavan, for deposit by them into a special interest bearing account to be held in escrow until such time as Stern delivers a copy of his federal income tax return for 1976 to Satra's attorneys as aforesaid; at which time there shall be deducted, by way of mitigation therefrom the following:

(i) the mitigable income, computed as afores-

said, from the earnings of Stern in 1976,

and

(iii) the mitigable income, computed as follows,
for the month of January 1977: 1/12th of the
mitigable income of 1976 shall be deemed
that portion of Stern's 1977 income allocated
in mitigation of his income earned in
January 1977.

The sums so deducted shall be payable by Stern's
attorneys, Stroock & Stroock & Lavan, to Satra from
the escrow account and (subject to the provisions
of Paragraph 4-d hereof) the balance remaining in
the escrow account, plus any interest which may
have accumulated thereon, shall be withdrawn from
the account by Stroock & Stroock & Lavan free of
any escrow for distribution pursuant to Paragraph
9 hereof.

d. In the event that the provisions of Paragraph
5-a(i) hereof become operative and the sums
deposited by Satra into the Special Account are
to be repaid to Satra, then there shall be paid

to Satra, out of the funds being held in escrow by Stern's attorneys, Stroock & Stroock & Lavan pursuant to Paragraph 4-c, the additional sum of \$4,105.34 which sum is the difference between those moneys due and payable to Stern pursuant to Schedule I of Paragraph 1 hereof and the moneys which would have been so due and payable if less than \$250,000 were received by Satra from IBM in any one year, as is indicated by Schedule I-A below:

76 A

Period Ending	(1) Received by Satra	\$ to Stern	SCHEDULE OF PAYMENTS			(4) Mitigation	(5) Cumulative Total Due Stern (Column 5+2+3-4)
			(2) Amount to Stern	(3) Interest at 6% per annum (.015 per quarter)			
<u>1971</u>							
12/31/71	\$25,000	50%	\$12,500	-	-	-	\$ 12,500
<u>1972</u>							
12/31/72	-	-		\$ 750	-	-	13,250
<u>1973</u>							
3/31/73	7,024.17	30%	2,107.25	198.75	-	2,437.50	(a) 13,111.50
6/30/73	12,969.25	30%	3,890	195.78	-	-	17,206.06
9/30/73	-	-	-	258.09	-	-	17,464.15
12/21/73	69,391.32	30%	20,817.40	261.96	-	-	38,543.51
<u>1974</u>							
3/31/74	50,001.00	30%	15,000.30	578.15	\$ 2,925.00	(e)	51,196.96
6/30/74	50,001.00	30%	15,000.30	767.95	-	-	66,965.21
9/30/74	50,001.00	30%	15,000.30	1,004.48	-	-	82,969.99
12/31/74	50,001.00	30%	1,500.30	1,244.55	-	-	99,214.04
<u>1975</u>							
3/31/75	50,001.00	30%	15,000.30	1,498.00	4,612.50	(e)	111,020.00
6/30/75	50,001.00	30%	15,000.30	1,666.36	-	-	127,257.36

- (a) Second half of \$50,000 retainer paid to Satra by IBM World Trade Corporation ("IBM")
- (b) Earned Fees and Commission paid to Satra by IBM in March and April 1973 respectively
- (c) Earned Fees and Commission of \$2,723.34 paid to Satra by IBM in November 1973 plus 4 payments of a \$16,667 monthly sum (i.e. \$66,668) from IBM.
- (d) Three payments (i.e. quarterly total) of a \$16,667 monthly sum from IBM.
- (e) 1st of Stern's income for the previous year based on (i) income for personal services earned by Stern and reported in his personal income tax return and (ii) any other income not so reflected which consists of earnings of any business entity wholly owned or controlled by Stern or the members of his immediate family which are attributable to services (less expenses) rendered thereto by Stern and not distributed to Stern or to the members of his immediate family and as to any business entity not so wholly owned or controlled, that proportionate part of such earnings (less expenses) as the ownership or interest of Stern and the members of his immediate family bears to the total ownership or interest.

5. There shall be set up special interest-bearing accounts of up to \$40,000 per account in savings banks or federal savings and loan associations (all of which accounts are herein collectively referred to as the "Special Account") in the joint names of plaintiff's attorneys Stroock & Stroock & Lavan and Satra from which any withdrawals shall be conditioned on the signature of both a member of the firm of Stroock & Stroock & Lavan and an authorized officer of Satra.

a. The sums actually deposited by Satra into said Special Account shall, in the month of January 1977, be paid (subject to Paragraph 4-d hereof), either:

(i) to Satra, to the extent that Satra is compelled to refund to IBM certain payments, and in the proportions that Satra is compelled to refund such payments, for the cause provided in the paragraph below set out [paragraph 2(b) (i) of the agreement between Satra and IBM effective as of September 1, 1973], and provided that Satra receives no consideration or benefit

in connection with said refund:

"Should World Trade [IBM] fail to receive payment from the Customer [the Union of Soviet Socialist Republics and organizations therein -- the payments refer to sums expected by IBM in anticipation of which IBM declared it undertook to pay \$9,350 monthly advances to Satra]; other than due to Customer's breach, SATRA will refund the accumulated advances to World Trade in December, 1976; if the Customer breaches, the amount of the refund will be in proportion to the percent of the unpaid payments of the Customer."

or

(ii) to Stern (as provided in Paragraph 9 hereof) in the event, and to the extent, that Satra is not compelled to refund such payments to IBM for the cause set out in paragraph 2(b)(i) of the agreement between Satra and IBM referred to in Paragraph 5-a(i) hereof, and provided that Satra receives no consideration or benefit in connection with said refund.

b. On application by Stern at any time, and in any event by January 31, 1977, any interest in the

Special Account and any other moneys in the Special Account over and above the aggregate amount which Stern would have to repay to Satra if Satra became obligated to refund moneys to IBM as set forth in Paragraph 5-a(i) hereof, shall be paid over to Stern (as provided in Paragraph 9 hereof).

6. Satra shall notify Stern, by letter mailed to his attorneys, Stroock & Stroock & Lavan, 61 Broadway, New York City, 10006, no later than the 30th day of January, May and September of each year after the date of this judgment and until January 30, 1978 (or such longer period of time for which the agreement between Satra and IBM effective as of September 1, 1973 is renewed or extended, and one year thereafter), with respect to the quarter immediately preceding said dates (excepting that the first notification shall cover the 6-month period preceding such first notification as to:

- a. Any contracts or agreements, or renewals or extensions of any contracts or agreements, oral or written, which Satra, or any subsidiary, parent or designee thereof, may enter into with IBM, or any subsidiary, parent or designee thereof, during

said period, which contemplate the payment or giving of consideration to Satra:

- b. The date and amount of, and the contractual authority for, all payments made to or for the account of Satra or any subsidiary, parent or designee thereof, from IBM, or any subsidiary, parent or designee of IBM, during said period;
- c. Any switch or barter arrangements referred to Satra, or any parent, subsidiary or designee thereof, pursuant to any contract or agreement, written or oral, with IBM, or any subsidiary, parent or designee of IBM, during said period.

The information so furnished to Stern's attorneys herein shall be received by them in confidence and utilized for the purpose of this action only, and shall not be disclosed to Stern provided however, that Stern's attorneys shall have the right to apply to the Court for permission to make such disclosure to Stern if they believe that consultation with Stern as to such information is appropriate.

7. Any moneys or fees payable to Satra or any subsidiary parent, or designee thereof, by IBM, or any subsidiary, parent or designee thereof, additional to the sums described in Paragraphs 1, 2

and 3 hereof and pursuant to or by reason of the agreement between Satra and IBM effective as of September 1, 1973, shall, when received be treated as income to Satra in which Stern shall share, payable according to the following formula, after taking into consideration all other income of Satra from IBM in that year:

- a. 30% of the first \$250,000 per calendar year,
- b. 40% of the next \$250,000 per calendar year,
- c. 45% of the next \$250,000 per calendar year,
- d. 47% of the next \$250,000 per calendar year,
- e. 49.5% of the remaining moneys per calendar year,

and Stern shall have execution thereof ten (10) days after the end of the quarter in which such income is received by Satra.

8. Stern shall recover of Satra the costs of this action in an amount to be taxed and Stern shall have execution thereof.

9. All sums payable by defendants to Stern hereunder shall be paid to Stern's attorneys Stroock & Stroock & Lavan, 61 Broadway, New York, New York 10006, and when so paid shall discharge Satra to the extent of such payments.

10. The Court shall have continuing jurisdiction with respect to this judgment.

Dated: New York, New York

Oct 14 , 1975

Mark Teller
United States District Judge

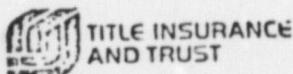
I, Marvin Stern, declare that for the years 1972, 1973 and . . .
 1974, other than income as reflected on my personal tax
 returns:

82A

1. I have received no other income consisting of dividends from any business entity wholly owned or controlled by me or members of my family;
2. There has been no income of any business entity owned or controlled by me or members of my family, which is attributable to personal services rendered by me in behalf of such business entity;
3. There has been no income of any business entity in which I or members of my family have an interest, which is attributable to personal services rendered by me in behalf of such business entity.

TO 447 CA (4-73)
 (Individual)

STATE OF CALIFORNIA
 COUNTY OF Los Angeles } SS.



ATICOR COMPANY

On July 31, 1975 before me, the undersigned, a Notary Public in and for said State, personally appeared Marvin S.

Known to me
 to be the person whose name is subscribed
 to the within instrument and acknowledged that he
 executed the same.

WITNESS my hand and official seal.

Signature Darlene Benthusen

NOTARY PUBLIC, STATE OF CALIFORNIA

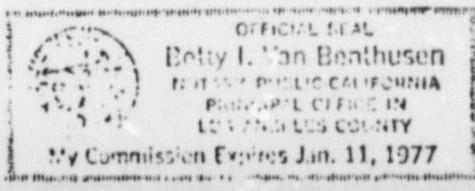


Exhibit B
ZIMMERMAN, SATIN & ROGOVIN
CERTIFIED PUBLIC ACCOUNTANTS

83 A

MILTON F. ZIMMERMAN, C.P.A.
ROBERT A. SATIN, C.P.A.
RALPH W. ROGOVIN, C.P.A.
JEFFREY S. GEIBELSON, C.P.A.

GLENDALE FEDERAL BUILDING
9454 WILSHIRE BOULEVARD, SUITE 811
BEVERLY HILLS, CALIFORNIA 90212
(213) 272-4125 274-7125

BANK OF AMERICA CENTER
555 CALIFORNIA STREET, SUITE 3170
SAN FRANCISCO, CALIFORNIA 94104
(415) 788-5322 788-5323

JULY 22, 1975

MR. ALVIN HELLERSTEIN
STROOCK, STROOCK AND LAVAN
61 BROADWAY
NEW YORK, NEW YORK 10006

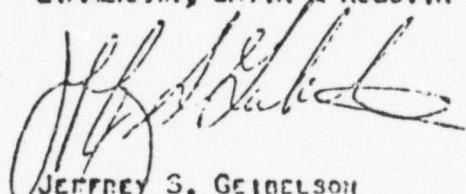
DEAR MR. HELLERSTEIN:

THIS FIRM HAS PREPARED THE U. S. CORPORATION INCOME TAX RETURNS OF MARVIN-Stern AND ASSOCIATES, LTD. FOR THE FISCAL YEARS ENDING JANUARY 31, 1973, 1974 AND 1975. THESE RETURNS WERE PREPARED FROM THE BOOKS AND RECORDS OF THE COMPANY AS PRESENTED TO US BY MR. MARVIN STERN. NO INDEPENDENT VERIFICATION OR GENERALLY ACCEPTED AUDITING STANDARDS WERE APPLIED IN THE PREPARATION OF THESE RETURNS. EACH YEAR'S OPERATIONS RESULTED IN A SMALL OPERATING LOSS AND THE RETURNS REFLECT NO UNDISTRIBUTED INCOME AFTER OPERATING EXPENSES. TO THE BEST OF OUR KNOWLEDGE, NO DIVIDENDS WERE PAID TO THE SHAREHOLDER OF THE CORPORATION.

IN ADDITION TO THE PREPARATION OF THE CORPORATE RETURNS, WE PREPARED THE PERSONAL INCOME TAX RETURNS OF MR. MARVIN STERN IN THE SAME MANNER AS DESCRIBED ABOVE.

VERY TRULY YOURS,

ZIMMERMAN, SATIN & ROGOVIN



JEFFREY S. GEIBELSON
CERTIFIED PUBLIC ACCOUNTANT

JSG:LW

1 UNITED STATES DISTRICT COURT

84 A

2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 MARVIN STERN,

5 Plaintiff,

6 -against-

: 72 Civ. 143

7 SATRA CORP. and
8 SATRA CONSULTANT,

9 Defendants.
10 -----x

11 April 1, 1974
12 10:00 A.M.

13 B E F O R E :

14 HON. MORRIS LASKER,

15 District Judge.

16
17 A P P E A R A N C E S :

18 STROOCK & STROOCK & LAVAN, ESQS.,
19 Attorneys for Plaintiff
20 ALVIN K. HELLERSTEIN, ESQ. and
GERALD D. FISHER, ESQ., of Counsel

21 SPEAR & HILL, ESQS.,
22 Attorneys for Defendants
THOMAS W. HILL, ESQ.,
ALPERT M. APPEL, ESQ., and
HENRY W. SIMON, ESQ., of Counsel

2 THE COURT: In an off-the-record discussion,
3 the Court asked defendant counsel whether the defendants
4 agreed that the sole issue, putting aside the claim
5 that damages, if any, should be mitigated, which has
6 been asserted by the defendant, was whether or not the
7 defendant had been fraudulently induced into entering
8 into the alleged agreement, or whether the defendant
9 additionally took the position that regardless of fraudu-
10 lent inducement, no binding agreement had been achieved.

11 As I understand it now, Mr. Hill, it is the
12 defendants' position that no binding agreement was ever
13 achieved regardless of whether there was fraudulent
14 inducement.

15 MR. HILL: Yes, sir, that is our position,
16 your Honor, and I should just say, which I did not say in
17 our off-the-record discussion, that we have made a
18 general denial here and this is a contract claim, and I
19 think that whole issue comes within the scope of a general
20 denial.

21 THE COURT: I haven't examined the records
22 for the purpose of determining whether that position
23 is supported by the record. I do agree with you that
24 a general denial conceivably could cover it. I am
25 somewhat surprised to find that you assert that position

1 b/w

3

2 because it did not seem to be to be covered by your
3 requests to charge, but we'll take that as we go along.

4 Now, the plaintiffs have moved to supplement
5 the amended complaint by adding to the complaint, I
6 assume, allegations covering the most recent agreement
7 between Satra and IBM, to wit, agreement of December
8 1973 which apparently is referred to in the material
9 submitted to me in pre-trial memoranda, et cetera, but
10 not in the pleadings.

11 The defendant has indicated that it is surprised
12 by the request to supplement the agreement, but in an
13 off-the-record discussion has not indicated to the Court
14 that it has been prejudiced by my granting the motion
15 to supplement the agreement.

16 However, Mr. Hill, if there is anything you
17 wish to state on the record in that record to protect the
18 record for yourself, you are free to do so.

19 MR. HILL: I would like to say this, your
20 Honor: That one, we are surprised, two, we have taken
21 the position that the 1973 contract is not a supplement
22 to or a modification of the 1971 contract. We think
23 that evidence with respect to payments which may or may
24 not have been made under this 1973 agreement will be
25 highly prejudicial to the defendant in this case; and

1 bjw

2 we would ask that your Honor make a determination as a
3 matter of law with respect to what this contract is or
4 isn't before this evidence goes to the jury.

5 I think that the question as to whether or
6 not the contract is a part of a '71 contract is a ques-
7 tion of law that we would respectfully submit should be
8 resolved before this evidence goes to the jury, and
9 then I think that if that's done, then everybody's
10 record is going to be in --

11 THE COURT: Mr. Hellerstein or Mr. Fisher, do
12 you want to comment on Mr. Hill's position?

13 MR. FISHER: Well, the December 1973 agreement
14 copy of which was furnished to us some time after it
15 was executed, has been marked, pre-marked as an exhibit,
16 was referred to in the pre-trial memorandum, indeed it is
17 listed in the stipulation of evidence entered into with
18 Spear & Hill and counsel for IBM as a document that was
19 going to be offered into evidence and the authenticity
20 of which was not objected to.

21 The parties all along knew that it was plain-
22 tiff's position that he is entitled to fifty percent of
23 any proceeds realized by Satra from IBM and this is
24 merely another form set up by Satra and IBM to give to
25 Satra compensation.

1 bju

2 THE COURT: May I see a copy of it?

3 MR. FISHER: It is attached as an appendix.

4 MR. FISHER: I might add for the record your
5 Honor, that it was prepared during the course of this
6 litigation without the consent of the plaintiff and
7 therefore obviously carefully worded to accomplish what-
8 ever results Satra may have desired to accomplish.9 THE COURT: I am prepared to rule on the point
10 that Mr. Hill has raised.11 MR. HILL: May I -- I don't mean to interrupt
12 your Honor, excuse me -- but I am looking at this docu-
13 ment which is entitled motion by plaintiff to supplement
14 amended complaint which seems to consist -- it really
15 isn't a motion at all -- what it is, as near as I can
16 figure out, is a bunch of suggested alterations to the
17 complaint substituting paragraphs. There is no argument
18 here as to why this should or should not happen; and in
19 addition, just the most hasty look at this thing seems to
20 indicate that they want to do a great deal more by way
21 of this amendment than simply put this contract in
22 evidence.23 THE COURT: Do you want to specify what you
24 mean?

25 MR. HILL: Well it's difficult, because I am

2 just leafing through this thing, but I don't have --

3 THE COURT: Let me make this suggestion, Mr.
4 Hill, and gentlemen: The precise language that may be
5 used in supplementing the complaint we don't necessarily
6 need to decide at this moment, although obviously it
7 should be decided as quickly as possible. We do need to
8 know whether or not you are going to be allowed to talk
9 about this agreement before the jury in your opening
10 statements, and your questions and so on.

11 You have put the proposition, and therefore I
12 suggest that I decide first whether or not it is appro-
13 priate to permit the supplementing of the complaint and
14 then I will deal on a more deliberate basis with the
15 language and you can point out to me what you think is
16 wrong with if if I decide in favor of the plaintiffs on
17 the general proposition.

18 I have already indicated that I don't believe
19 that prejudice has been demonstrated by the proposed
20 supplement.

21 You have raised the question of whether as a
22 matter of law the December 1973 contract is or is not the
23 kind of contract contemplated by, let us call it, the
24 correspondence or documents explained between the plain-
25 tiff and the defendant Satra.

1 b/w

7

2 I am prepared to rule that it cannot be said
3 that, as a matter of law, the agreement of December 1973
4 is not such a document; that my conclusion is that the
5 status of the December 1973 is a factual question or
6 at best a mixed fact and law question, and that it
7 must be determined by the jury whether or not the parties
8 contemplated by their exchange of documents that an
9 agreement such as the December 1973 agreement would
10 fall within the parameters of their arrangement or not,
11 and therefore, Mr. Hill's objection on that ground is
12 denied.

13 Now, it has been stipulated also as I under-
14 stand it that all pre-marked exhibits and all the exhibits
15 have been pre-marked, are regarded as authentic, that is
16 that no objection is to be made by either side as to
17 authenticity of such documents.

18 It has been stipulated that the case originally
19 against IBM World Trade and Mr. Stafford have been dis-
20 missed with prejudice. Is that correct?

21 MR. HELLERSTEIN: We would ask the sever
22 those two defendants and continue the claims against the
23 two Satra defendants.

24 THE COURT: I will take it there is no objection.

25 MR. HILL: No, your Honor.

2 MR. FISHER: One final point. IBM and the
3 parties have entered into a stipulation of evidence as
4 supplemented by a letter which I think your Honor has
5 received.

6 THE COURT: I just received it this morning,
7 yes.

8 MR. FISHER: I take it there is no objection to
9 attaching the letter to the stipulation in evidence.

10 MR. HILL: We'd like time to read the letter,
11 your Honor. We got it this morning.

12 THE COURT: Very good, you will let us know.

13 MR. HELLERSTEIN: Your Honor, did we reserve on
14 this mitigation point to discuss that later?

15 Was there a ruling on that?

16 THE COURT: I didn't rule on it. On the ques-
17 tion of mitigation of damages, I stated that I under-
18 stood even Mr. Hill's papers -- and I see even Mr. Hill's
19 because I understand that you don't believe that the
20 issue is in the case at all -- but I understood even
21 Mr. Hill's papers only to request that should there be a
22 verdict favorable to the plaintiff, then the Court would
23 be obligated to determine certain questions of damages;
24 and my suggestion, although I suppose it could remain a
25 jury question, would be to leave that either to a later

2 trial by jury, if desired, or to a determination by the
3 Court but not to place that issue before this jury at
4 this time.

5 It seems to me that it would be confusing and
6 prolong the trial unduly, and that is the procedure I'd
7 like to follow.

8 Does anybody object to that?

9 MR. HILL: That is acceptable to us.

10 MR. HELLERSTEIN: Your Honor, there are some
11 other points we wanted to talk about. I don't want to
12 hold up the jury. You asked though for what types of
13 questions your Honor might ask.

14 THE COURT: Yes.

15 MR. HELLERSTEIN: At the risk of mentioning
16 the obvious, residence, business address, educational
17 background, occupation, acquaintance with parties and
18 counsel, prior jury experience to assure against con-
19 fusion between criminal and civil standards.

20 THE COURT: All right, fine, I will do all
21 those things.

22 THE COURT: Very good.

23 Gentlemen, we will break now and choose the
24 jury and then if there are any questions remaining we will
25 come back.

(A jury and two alternates were duly impaneled and
sworn)

2 THE COURT: Ladies and gentlemen of the jury,
3 we will take a short recess at this time. I have some
4 questions of law I have to discuss with the attorneys
5 before we actually start the trial. I will ask Mrs.
6 Panzer, the Court Clerk, to show you to the jury room.
7 Don't dig in too fully back there because after lunch we
8 will be going to another courtroom, where we will be
9 staying permanently and it will be more comfortable than
10 this one. So you leave your things, of course, in the
11 jury room.

12 (In the robing room; jury not present.)

13 THE COURT: What other matters are there,
14 gentlemen?

15 MR. HELLERSTEIN: Your Honor, Rule 48 provides
16 for the possibility of a stipulation to a majority verdict
17 which would be subject --

18 THE COURT: Stipulation what?

19 MR. HELLERSTEIN: To a majority verdict which, if
20 it would be satisfactory to all counsel and the Court,
21 would be satisfactory to us, some majority that we can
22 decide if Mr. Hill wants to.

23 THE COURT: Of course, I encourage that sort of
24 thing because I don't want to have to try a case again if
25 the jury can't decide.

1 2 mbmch

2 MR. HILL: I would not be satisfactory to us,
3 your Honor.

4 THE COURT: All right.

5 MR. HELLERSTEIN: We were considering whether
6 this is a case that was appropriate for a general verdict.
7 There are a number of issues that seem to come up along
8 the way in terms of the specifics of the contract, if
9 we win the contract point, if Mr. Hill loses the affirmative
10 defense point, the jury is going to have to resolve the
11 question of damages. Possibly.

12 I am not clear in my mind whether this is going
13 to be a jury issue or whether it is a Court issue, and
14 I gather from Mr. Hill's brief that he also is somewhat
15 uncertain about those particular points.

16 THE COURT: Perhaps he is uncertain. It seems
17 to me that he suggests, at least, that it be deferred
18 for final determination in view of the fact that he claims,
19 and I don't know whether you agree with it or not, that
20 because of the contingency that the plaintiff is not
21 entitled to be paid until 1975 or '76 --

22 MR. HILL: '75, I think, your Honor, the end of
23 1975.

24 THE COURT: I don't know what your position is
25 on that because, of course, he raised that question at

1 3 mbmch

12

2 least to my knowledge in the pretrial memorandum, and you
3 weren't called upon to answer that until now.

4 MR. HELLERSTEIN: Our position is this, your
5 Honor, and the force of the position contradicts what
6 Mr. Hill's contention is; that an advance against future
7 commissions is treated as a retainer under the document.
8 If you recall, there is handwriting at the foot of Page 3
9 of the August 31st document, which is the contract
10 according to our contention; which says in effect that
11 retainers are not subject to the schedule of expenses.
12 Under that arrangement, Dr. Stern was paid 50 Per cent without
13 deduction in the first retainer payment and it is our
14 contention, and what I think the evidence will clearly
15 show, that Dr. Stern is entitled to 50 per cent of all
16 the advances as they are currently paid, and that is
17 the framework of the contract.

18 THE COURT: Does it follow from that that you mean
19 that you don't think the contingency applies to any payments
20 to which Dr. Stern would be entitled, or are you merely
21 saying that even if it applies you should be paid now and
22 then if they have to repay any you should repay them?

23 MR. HELLERSTEIN: I am saying the latter,
24 certainly, and I would like to give further thought to the
25 former.

1 4 mbmch

2 MR. HILL: I think that raises a question, your
3 Honor, again with respect to this '73 contract; and this
4 is why we keep taking the position that what these contracts
5 say or don't say is strictly a matter of law. The retainer
6 referred to in the first agreement, for example, to which
7 the 50 per cent applied and as to which one payment was made
8 under the terms of the IBM contract, a nonrefundable
9 retainer. Now, the so-called retainer in the second contract
10 is not a norrefundable retainer but indeed has this
11 contingent aspect of it; and it also specifically relates
12 to services to which it is our position this expense schedule
13 applies.

14 There has been a new theory introduced into the
15 case, at least, certainly, new to me, within the last few
16 days, with respect to whether or not the expense schedule
17 in the '71 contract applies to retainers paid under the
18 second contract. I must say I don't even see how they
19 are related, but nonetheless this is the position that is
20 taken.

21 Now, all of these issues, it seems to me, come
22 into the case only if this so-called second contract is
23 involved, and this is why I think I took the position
24 earlier that I did that some resolution of that has
25 got to be made before we march on with the trial of this

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2 case.

3 MR. HELLERSTEIN: Your Honor, let me say this:
4 We made a motion before you which was heard by Judge
5 Ward and continued by you because we were concerned about
6 the negotiations that were going on between Satra and IBM
7 and we wanted to be part of those negotiations to guarantee
8 against the possibility. We were excluded, weren't even
9 given notice. We were given the contract as it was given
10 to us. And that is the first time we saw it; it was a
11 completed document.

12 There is no proof that is possible with respect
13 to what the parties had in mind with respect to that
14 document. We take that document as it is and we might
15 not apply it as the Court and jury sees fit in terms of
16 the overall arrangements that were constructed by the
17 parties in 1971.

18 Now, there are two forms of payments in the 1973
19 agreement. One is a flat \$16,000-some odd payment per month
20 not contingent on anything.

21 The second is a \$9,000-some odd payment which is
22 labeled "advance against commissions." Now, the original
23 document had a retainer arrangement in it. The retainer
24 was chargeable against future commissions.

25 The proof will show that the parties had in mind

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2 substantial possibilities of substantial retainers, and
3 that these were to be advanced.

4 THE COURT: You mean Dr. Stern and Satra?

5 MR. HELLERSTEIN: Yes, originally in 1971, and
6 that this is the closest analogy possible to what happens
7 in 1973. And under that analogy, and the force of the
8 analogy, Dr. Stern is entitled to half the payments as
9 they are made; in the same form as he would if the retainer
10 had been paid and partly was paid to him in 1971.

11 THE COURT: Well, let me say I think that --

12 MR. HELLERSTEIN: I might say, your Honor, that
13 it's really a question of law once the facts come in on
14 the underlying arrangement in 1971.

15 THE COURT: But the question is who is to decide
16 that question of law?

17 MR. HELLERSTEIN: This is why I raised the
18 original point, because it's not clear in my mind just how
19 this thing will go, and I think we'll have to attack it
20 as we go along.

21 If the jury is to decide some questions, I think
22 the questions are rather limited on these kinds of problems
23 and it may be that your Honor will want to use special
24 questions.

25 THE COURT: I am inclined to think that in a case

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2 that is as much of a mixture of factual questions and legal
3 questions as this one certainly is, special interrogatories
4 or special verdicts for the jury may be a better way to
5 proceed.

6 What I would like to ask you, therefore, to do is
7 to have available by tomorrow morning a list of the
8 questions that you would like to have the jury -- that you
9 believe that the jury should appropriately answer in this
10 case, and of matters, if you wish, that the jury should
11 not be called upon to answer, but that the Court may have
12 to determine.

13 Now, I realize that to some extent that leaves
14 us a little bit rudderless until I rule on those questions.
15 I think that that is regrettable and it's too bad that those
16 questions were not distilled down to their essence
17 earlier, but we are where we are, and what I propose to
18 do is to tell the jury that when it comes time for them
19 to decide matters given to them, they may have put before
20 them a list of specific questions to answer rather than a
21 general proposition; and that it is possible that some of
22 what they hear during the course of the trial may go somewhat
23 beyond those specific questions, but, if so, it is for
24 background for them, and I will be very glad to entertain
25 further instructions to the jury at the time that I do

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2 instruct them as to what facts, if any, are irrelevant
3 to their determination of the ultimate questions put
4 before them. I don't think we can tailor this thing down
5 to a fare-thee-well at this point. It's complicated.
6 and difficult; I did invite a non-jury trial at an earlier
7 time. I am not at all disappointed that the defendant
8 decided they preferred a jury trial but it's just the nature
9 of the case that makes it a little tricky; and that is the
10 path that I believe will be the most constructive.

11 MR. HILL: Well, your Honor, just a couple of
12 things I'd like to raise.

13 THE COURT: Surely.

14 MR. HILL: Because we don't have a pretrial order
15 in this case and because I think at least several of the
16 witnesses are in control of Satra and then there are
17 several sort of lost bodies wandering around, I wonder if
18 it would be possible for the plaintiff to tell us who he
19 proposes to call and in what order, so that we can prepare
20 ourselves.

21 THE COURT: Yes, I do ask him to do that.

22 MR. HELLERSTEIN: Dr. Stern will be our only live
23 witness on the direct cast. We may have others on redirect
24 but Dr. Stern will be --

25 THE COURT: You mean on rebuttal when you say

2 redirect?

3 MR. HELLERSTEIN: Yes, your Honor.

4 MR. HILL: Fine, your Honor.

5 THE COURT: Very good. All right.

6 (In open court; jury present.)

7 THE COURT: Ladies and gentlemen, since so few
8 of you, as I recall, have served on juries before, let me
9 give you a brief description of what to expect during the
10 course of the trial.11 The case will open by a statement of the attorneys
12 on both sides; as to what, in the case of the plaintiff,
13 he expects to prove, and what, in the case of the defendant,
14 it expects either to prove or disprove.15 Now, neither those statements nor statements made
16 by the attorneys or myself during the course of the case
17 constitute any evidence, and the case can only be decided
18 on the basis of evidence. As I mentioned earlier this
19 morning, the evidence will consist of the testimony of
20 the witnesses that you will hear from the witness box and
21 from documents or other exhibits put before you, and
22 from facts that are agreed to. After the opening statements
23 are concluded, then Dr. Stern's witnesses will be called,
24 and his attorney will question the witness in the first
25 instance, and the other side will cross-examine.

* * *

2 entitled to a certain commission or certain retainers for
3 giving consultation advice. Whatever Satra would get,
4 Dr. Stern would get half. That was the deal they made --
5 that was one proposal. That proposal didn't require
6 Satra to lay out a cent. It didn't have to pay any salary
7 to Dr. Stern. Both parties went in at risk, as it were.
8 If the deal between IBM and Satra came to fruition, it would
9 be profitable. If it didn't come to fruition, the both
10 parties could go their separate ways, nobody would have lost
11 anything.

12 The other proposal that was advanced by Satra
13 to Dr. Stern, also embodied in this document, was something
14 different. Satra, in effect, announced that it would lay
15 out some money, \$6,250 per month for six months; and a
16 lesser percentage would go to Dr. Stern, 30 percent rather
17 than 50 percent; and there are various other explanations
18 about this document that I needn't get into at this time
19 because it will get a little complicated, and you will
20 understand as it comes through at the trial. The important
21 thing that I want you to remember, and you will remember
22 it if it will become a part of the testimony, is that Dr.
23 Stern chose the 50-50 arrangement; and that was what Mr.
24 Oztemel said he wanted also. They were partners, in effect.
25 The document labels it a joint venture, but they were

2 partners. They were sahring. If Satra would get money
3 from IBM, if IBM made an agreement with Satra, they would
4 share; and they continued to work at getting the agreement
5 with IBM.

6 On September 22nd, success; and you will see, it
7 will be introduced into evidence, a document which is
8 called "Consultant and Financial Representation Agreement"
9 between Satra Corp. and IBM World Trade Corp.; September 22,
10 1971.

11 The document is signed, and under this document
12 Satra get 3-1/2 percent of data processing equipment that
13 IBM sells to Russia.

14 Data processing equipment are these gigantic
15 computers that you have heard about, read about, and some
16 have seen.

17 Satra was to get 3-1/2 percent, and a retainer of
18 \$50,000, and Dr. Stern was to share in half of it under
19 that agreement.

20 Now testimony will go as to how this was elab-
21 orated on, that there was also an agreement for office
22 equipment, that gave a certain percent commission, the two
23 would have amounted to a 4 percent commission, so in effect
24 Dr. Stern was to get 2 percent and Satra was to get 2
25 percent.

* * *

2 a party will advance for what we think is a plain reneging.
3 They contend that the reason they call this contract
4 invalid, not enforceable, is because Dr. Stern was supposed
5 to do something and didn't do it.

6 Well, together we will search this document out
7 and find out what Dr. Stern had to do beyond helping to
8 introduce the parties together; and we will urge you that
9 there was nothing more that he had to do and, in fact, we
10 will introduce admissions by Mr. Oztemel himself that will
11 say just as much.

12 Then they give another reason -- the defendants
13 do -- as to why this document is not valid and not
14 enforceable; and they say that Dr. Stern committed fraud.
15 That is a fancy way of saying he lied, he cheated. But
16 that is the contention; and you jury will decide whether
17 Dr. Stern lied and cheated, defrauded, or whether these are
18 put-up reasons for a plain reneging.

19 They claim that Dr. Stern made five false
20 representations, as they call it. They said that Dr.
21 Stern told Satra that he was influential with IBM; and
22 that he could help convince IBM to enter into the Russian
23 market. They say that Dr. Stern helped persuade IBM
24 to use Satra Corp. and that he represented that he would
25 do that and in fact he represented to Satra, they claim,
that IBM wouldn't use Satra unless Dr. Stern was a part

* * *

2 was labeled \$50,000 which was to be very modest in terms of
3 the overall contract, and these were to be charged against
4 fugure commission.

5 Now, these words are very important. They will
6 become more important now and I don't really expect that
7 you will have a complete perspective to digest all this infor-
8 mation at this time. But suffice it to say that under
9 this agreement, as we will urge to you, if something was
10 labeled an advance against future commission, it was to
11 be considered as a retainer and no expenses were to be
12 deducted from it.

13 If it was to be a commission payable as sales
14 resulted, according to percentages, then there would be
15 the schedule of expense deducted. These will be the subject
16 of further elaboration and further instruction as the case
17 goes along. But there will be some proof about this
18 and I want to alert you about this point so that you would
19 understand the proof.

20 It's improtant to get back into the basic
21 situation, the basic problem. It really is a moral problem.
22 Whether this is a valid and enforceable contract, entitled
23 to be enforced; whether Dr. Stern was a lair and a cheat;
24 whether Satra Corporation is plainly reneging -- that is
25 the question. That is the basic question of the case.



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2 THE COURT: Yes, Mr. Hellerstein.

3 MR. HELLERSTEIN: Dr. Stern, would you take
4 the stand.

5

6 M A R V I N S T E R N , called as a witness,
7 being first duly sworn, was examined and testified
8 as follows:

9 THE CLERK: May I have your name, please?

10 THE WITNESS: My name is Marvin Stern.

11 THE CLERK: S-t-e-r-n.

12 THE WITNESS: That's right.

13 THE COURT: Mr. Hellerstein, all I can -- any
14 procedure you wish to follow is satisfactory with me.
15 The room is very poorly designed and fortunately we
16 will only be here for another half hour or so.17 MR. HELLERSTEIN: I'll take the security of
18 the counsel table, your Honor.

19 THE COURT: All right.

20 DIRECT EXAMINATION

21 BY MR. HELLERSTEIN:

22 Q Dr. Stern, where do you live?

23 A I live in Los Angeles, California.

24 Q I notice you have a stammer.

25 A Yes, I'll ease up after a while. I'm sorry.

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2 Q Is that something that you've had for some
3 time?

4 A Yes, I've had it all my life.

5 Q Now, I'd like first to go into, generally
6 your background.

7 Where were you educated?

8 A I got a bachelor's degree in engineering here
9 at CCNY; I got a master of sciences at New York University;
10 and a doctorate in mathematics at New York University.

11 Q What year was it when you received your doctorate?

12 A The doctorate was in 1954.

13 THE COURT: Where did you say you received
14 your doctorate?

15 THE WITNESS: Here at New York University in
16 1954.

17 Q Would you state generally your employment
18 after 1954?

19 A Yes. I had been working though, from 1954
20 on. After I got my bachelor's. But from 1954 on, I
21 worked for about six years, coming up from the conveyor
22 division of General Dynamics up into the corporate
23 office. That I spent a hitch in the government.

24 Q When was that?

25 A 1960 through 1962.

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2 Q Between 1960 and 1972, what position in the
3 government did you occupy?

4 A I became the deputy director of the defense,
5 research and engineering in the office of the Secretary
6 of Defense.

7 Q How many steps were you removed from the
8 Secretary of Defense?

9 A That's a little complicated. I was actually
10 one removed. But I was borrowed by him to work for him
11 directly.

12 THE COURT: Secretary McNamara?

13 THE WITNESS: That's right. At least half
14 my time.

15 Q After 1962, generally what kind of work did
16 you do, what kinds of occupations did you have?

17 A I was vice-president of research and engineer-
18 ing at North American Aviation which is a couple billion
19 dollar a year firm.

20 Then I became a director of General Precision
21 Corporation. I was president of one of its divisions
22 that had to be turned around. Somewhere's I was vice-
23 president of the Rand Corporation. I had some venture
24 capital and management consulting.

25 Q In the course of your management consulting,

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2 did you happen to do any consulting for the defendant
3 the Satra Corporation?

4 A Yes.

5 Q When was that; when did it begin?

6 A Informally it began December 1970 or January
7 1971 and it became more formal in about April 1971.

8 Q For what purpose did Satra Corporation tell
9 you that they engaged you?

10 THE COURT: Would you refer to a specific
11 person instead of talking about a corporation?

12 Q Who was it in Satra Corporation that engaged
13 you?

14 A It was actually a combination of Mr. Ara Oztemel
15 and Mr. James Giffen, who was an officer of Satra.

16 The reason I was engaged, if that's your question?

17 Q Yes, what did they tell you they engaged you
18 for?

19 A They were working with Mack Truck in an effort
20 to get them together with the Russians on the design and
21 equipment for Kama River Truck Plant. At the time I
22 was engaged, I was advised by them that the United
23 States government through the Department of Commerce,
24 had said that the U.S. wouldn't allow, U.S. firms to
25 assist the Russians in a project like that.

2 Q Before we get into what you did, as a con-
3 sultant for Satra Corporation, let's just sketch in
4 for the jury, some of these terms we have been using.

5 You use the reference to Kama River project.

6 A Yes, sir.

7 Q Tell the jury what you understood that to
8 mean.

9 A The Russians wanted to build a plant. It
10 happened to be at the Kama River. That's all. The
11 plant was to turn out trucks. A lot of them. The single
12 plant they wanted to design was going to turn out more
13 trucks than all of the truck manufacturing capability
14 here in the U.S.

15 Q You've mentioned Mack Truck. Was this company
16 hopeful of selling trucks or building a plant at the
17 Kama River?

18 A Yes.

19 Q Building a plant, a truck plant?

20 A Basically the design of the plant and getting
21 together the equipment for the plant and selling the
22 equipment to the Russians.

23 Q Now, is it required that the United States
24 government give some expression of approval to this kind
25 of an arrangement?

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2 A Yes, it is.

3 Q How does it manifest that kind of approval,
4 as you understood it?

5 A It it's a very simple thing like shoes, you
6 look in a book and you see that you are allowed to sell
7 shoes to the Russians. If it's something like the plant,
8 there has not been a policy to allow such things before,
9 so almost automatically the answer is no, you cannot.

10 You may then go through hearings or discussions
11 to see whether or not an exception can be made.

12 Q Now, describe for the jury, generally the
13 kind of work that you had as a consultant for Satra during
14 that period of time.

15 A You mean on this particular project?

16 Q Yes.

17 A Well, actually the reason I agreed to become
18 a consultant is, I first informally made some inquiries
19 in Washington. I felt that the U.S. government was
20 beginning to consider the possibility of detente between
21 U.S. and Soviets. In such consideration, they were exam-
22 ining actively the role of expansion of trade.

23 I then got actively involved. Since it was
24 a policy that was in the process of being evolved, it
25 included many agencies of the government. So I would

2 arrange for and participate in meetings with a couple of
3 assistant Secretaries of Defense, with an assistant
4 Secretary of State and assistant Secretary of Commerce,
5 a couple of them; with the chairman of the export-import
6 bank; with the special assistant to the president on
7 international economic affairs; with some of the staff
8 of the national security counsel; with the staffs of
9 many of the congressmen involved and with some of the
10 congressmen and senators, especially since I had begun
11 to interact with some very high level Russians and with
12 the heads of some major U.S. firms who would become
13 involved in the plant.

14 Q On whose behalf did you engage in these
15 activities?

16 A These were done for Satra. What I would do
17 would be --

18 Q Let me ask you this --

19 A I'm sorry. Go ahead.

20 Q You say you did these activities on behalf of
21 Satra.

22 A Yes.

23 Q What was, as you understood it, Satra's role
24 to be in this whole activity?

25 A If, in fact, the U.S. was going to allow

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2 projects such as this, then Satra hoped to be able to
3 represent those U.S. firms who would be doing business
4 with the Russians and thereby would earn their fees.

5 Q What kinds of services did Satra hold itself
6 out as being able to do in respect to the activities
7 that you were engaged in?

8 A I'm not sure if I understand.

9 You mean I was engaged in?

10 Q Let me put the question again.

11 What activities were Satra supposed to do?

12 A All right. They were getting together U.S.
13 firms with the Russians. They would assist in negotiations
14 between U.S. firms and the Russians. They would assist
15 in facilitating the making of commercial arrangements
16 which might also involve them having to do financing
17 by way of barters or what have you.

18 Q I want to ask you about this term you just
19 used because it will come up again.

20 You said financing and barters; will you explain
21 to the jury what is meant here.

22 A The Russians make an effort to plan. In the
23 plan they hope for a balanced trade. So if there's an
24 element in the plan which has already accounted for the
25 balance in the trade, then if they would buy against that

2 element, they would expect to be able to pay in cash.

3 In not, they would have to generate Western
4 cash. The way they would have to do that, would be to
5 sell some products of their own. They could do it
6 either directly or indirectly. Usually they would use
7 the leverage of dealing with he who wants to sell to
8 the Russians and trying to force him to take Russian
9 commodities off of their hands.

10 Q Was Satra involved in this kind of activity?

11 A Yes.

12 Q How were they involved?

13 A They would relieve the U.S. firm of having to
14 sell the -- turnips . They would take that and sell
15 it elsewhere, so that the U.S. firm would receive cash.

16 Q In other words, if Russia wanted to pay in
17 turnips, you used that as an illustration, it would be
18 timber, magnese, anything else.

19 A Yes.

20 Q If Russia wanted to pay in that, Satra would
21 take it sell it elsewhere and pay the company in the
22 United States for whom they were consulting?

23 A Yes.

24 Q Was it part of your consultation for Satra, that
25 you introduced Satra to possible clients in America,

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2 by clients I mean companies that were interested to do
3 business with Russia.

4 A I'm not sure I understand what you mean when
5 you say was it part of my consultation?

6 Q Was it part of what you were engaged for?

7 A No.

8 Q Did you nevertheless introduce Satra to some
9 companies?

10 A I did.

11 Q Name some, please?

12 A I introduced them to Gould Industries.

13 Q Gould Industries?

14 A Yes, they make batteries and electronic
15 instruments, things like that.

16 I introduced them to Boeing Company.

17 Q That's the company that makes the 747 and 707's?

18 A That's right.

19 I introduced them to Cerro, which is a major
20 copper mining firm.

21 Q C-e-r-r-o?

22 A Yes.

23 Q That's a company that mines copper and sells
24 the copper alike?

25 A Yes. I introduced them to Stromberg-Carlson

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2 and General Dynamics. And I introduced them to IBM.

3 Q Leaving IBM aside, did any of these intro-
4 ductions lead into deals between Satra and any of these
5 companies that you know of?

6 A You mean in finalized deals?

7 Q Yes.

8 A I'm unaware of it. I don't have that informa-
9 tion, so I can't answer.

10 Q All right, we'll leave IBM for separate treat-
11 ment as we go along in the testimony.

12 Q Did there come a time when you or anyone in
13 the Satra organization discussed a financial arrangement
14 that would involve these introductions to companies?

15 A Yes.

16 Q With whom did you have such a discussion?

17 A With Ara Oztemel.

18 Q When?

19 A Can I have my calendar?

20 THE COURT: What is his position at Satra,
21 so the jury can understand.

22 MR. HELLERSTEIN: Yes.

23 Q You mentioned Ara Oztemel, what is his position
24 at Satra?

25 A He owns between 70 and 80 percent of the stock,

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2 I believe. He's either chairman of the board or president,
3 what have you.

4 Q He's the principal of the company?

5 A He's the principal.

6 Q The major actor?

7 A Yes.

8 Q In the whole course of your activity with Satra
9 Corporation, was he the boss?

10 A Yes.

11 Q All right.

12 Now, I give you what has been marked as Plain-
13 tiff's Exhibit No. SSS; would you identify that document
14 for the jury and Judge?

15 A I am in the habit of carrying a calendar, on
16 which I make my appointments. This is the one from the
17 year 1971, which for some reason or other has been stapled.
18 May I open it?

19 Q Yes. Is it your habit to be precise, Dr.
20 Stern?

21 MR. HILL: I'm going to object to that.

22 THE COURT: Ask him if he makes the entries at
23 or about the time that the events occur.

24 Q With respect to the entries within that docu-
25 ment, Mr. Stern, when did you make them?

2 A Well, I would hope it is 80 percent accurate.

3 Q I didn't ask you about the accuracy.

4 When was it, did you make the entries on
5 there after the event or at the time of the event?

6 A Usually, I would make them before the event.

7 THE COURT: In other words, when you made a
8 date you put it down in the book?

9 THE WITNESS: Usually.

10 THE COURT: Otherwise what did you do?

11 THE WITNESS: On rare occasions, I would note
12 something a day or two after to make sure I remember for
13 expense reasons.

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2 Q We are talking about entries then that you put
3 down at the time or within a short time afterwards?

4 A Yes.

5 Q All right. Now, using that to refresh your
6 recollection, the question was when you had this first
7 discussion with Ara Oztemel concerning the topic of some
8 arrangement for yourself in connection with companies
9 that you introduced Satra to.

10 THE COURT: Does that refresh your recollection
11 as to what the date is?

12 THE WITNESS: Generally. I had a dinner meeting
13 on the evening of the 10th.

14 THE COURT: That is 1971, right?

15 THE WITNESS: 1971, that's right.

16 Q Where was the meeting?

17 A Mr. Oztemel, Miss Van Stavern and I walked up
18 on the East Side and he picked a restaurant. I don't
19 know.

20 Q Who was Miss Van Stavern?

21 A She was his executive secretary. I believe
22 worked with or for him ever since the corporation began.

23 Q Did the three of you have dinner together?

24 A Yes, we did.

25 Q During the dinner, did you have a discussion

about the subject I asked you the last question, namely
the possible arrangement for yourself?

A Yes.

Q Would you tell the jury what was discussed in substance?

A There had been an allusion to the difficulty in making an arrangement whereby I could join the company as a regular employee. We were searching for alternate ways by which we could work together.

Q Would you tell the jury what the people at the meeting, you, Mr. Oztemel, Miss Van Stavern said about those ways?

A Well, I said -- we were having such difficulty in finding a suitable arrangement, I said, "You know if I finance myself, I would work with you as a pure joint venture," namely I'd be independent of Satra, I would help to search for the kind of companies in the technology related fields where one might hope to do business between them and the Russians, and we would work on that together.

Q You said joint venture.

A That's right.

Q What would you share?

A We would share as equal partners. In fact,

2 the word partnership was used.

3 Q In what would you share?

4 A In all the profits that we would make from
5 the activity of such potential clients in doing business
6 with the Russians.

7 Q Was there anything discussed about payments of
8 money to you?

9 A Oh, yes. The issue was I could not or I at
10 the time did not want to make an offer of us operating
11 as joint ventures since I was concerned about being able
12 to finance my half of the effort, namely, the expenses
13 I would need for travel and to -- some kind of a salary
14 so I might be able to support my family.

15 Q Did you express that concern to Mr. Oztemel
16 at the meeting?

17 A Yes.

18 Q Did Mr. Oztemel answer you?

19 A Yes.

20 Q What did he say in substance?

21 A He immediately responded, if the only thing
22 that was inhibiting the possibility of this kind of
23 relationship between us, which he thought would solve his
24 internal organizational and management problems, he
25 thought that this partnership arrangement whereby I am

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2 outside of the company and we worked together as equals,
3 would be a wonderful solution, and if the only thing
4 that is standing in the way was that I needed a fee to
5 cover my salary and my expenses, hell, he said, he will
6 cover that.

7 Q Were any amounts discussed?

8 A No specific amounts were discussed. We
9 generally had an understanding of the kind of expenses
10 but no specific amounts were discussed for my travel and
11 salary.

12 Q At the end of the meeting, was anyone supposed
13 to put any of this in writing?

14 A He said, "Look, we really have an answer."
15 Why don't I write it up and present it to him.

16 Q Who is I, here, Mr. Oztemel or you?

17 A All right, Mr. Oztemel said that we have an
18 answer to the problem, and that Marvin Stern should write
19 it up and we would go over it and have an agreement.

20 THE COURT: Dr. Stern, I understood that Mr.
21 Oztemel said that "We have an answer and it should be
22 written up."

23 Did he say you should write it up or he should?

24 A He said I should write it up.

25 THE COURT: I think it would be a good point

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2 at which to quit for lunch.

3 Ladies and gentlemen, you are excused at this
4 time to return to Room 1105. We will start again at
5 2:00 o'clock. Please be prompt. Please don't discuss
6 the case among yourselves or with anybody else until it
7 is all finished and you get in the jury room because you
8 might do injustice to one of the parties going off before
9 you have heard the whole story.

10 (Luncheon recess)

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2 AFTERNOON SESSION

3 2:00 p.m.

4 (In open court; jury present.)

5 M A R V I N S T E R N , resumed.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. HELLERSTEIN:

8 Q Dr. Stern, before the luncheon recess you
9 mentioned a number of companies that you had introduced
10 Satra to; and I think you testified that, to your knowledge,
11 none except IBM had come to fruition.

12 Did you receive any compensation whatever from
13 Satra Corporation with respect to any of those introduc-
14 tions, leaving aside IBM?

15 A No.

16 Q We left off at the luncheon break following the
17 discussion of the dinner meeting that you had with Miss Van
18 Stavern and Mr. Oztemel. Following the meeting, did anyone
19 undertake to write up what had been discussed at the meeting?

20 A Yes. I wrote up my understanding of what we
21 had agreed upon.

22 Q With respect to that discussion, had you focused
23 on any particular companies that would be covered by this
24 memorandum or this write-up?

25 A No. The understanding that we had agreed upon

1 mbmch 2

Stern-direct

2 and the write-up pertained in general to technology-related
3 U.S. firms.

4 Q I show you what has been marked Exhibit A. I ask
5 you if you can identify that document.

6 A Yes.

7 Q What is it?

8 A The typed document is what I prepared as my under-
9 standing of what we had agreed upon the night before.

10 Q What did you do with that document?

11 A After I wrote it, I then showed it to Miss Van
12 Stavern to get her concurrence if it was in fact what had
13 been agreed upon the night before.

14 Q Did you show it to her?

15 A Yes, I did; and she read it over and said yes, this
16 is what was agreed upon the night before.

17 Q Did you use anything to get to the form of this
18 document?

19 A Yes. I asked around the Satra offices whether
20 there were agreements such as the one I had discussed with
21 Mr. Oztemel.

22 Q Did anybody give you anything?

23 A One of the members of the staff showed me an agree-
24 ment that Oztemel had signed with another individual in a
25 joint venture relationship very similar to the one that he

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Stern-direct

2 THE COURT: All right. It's received without
3 objection.

4 xxx (Plaintiff's Exhibit A is received in evidence.)

5 MR. HELLERSTEIN: May I distribute copies to the
6 jury, your Honor?

7 THE COURT: Yes, you may.

8 (Copies were distributed to the jurors.)

9 Q Now, Dr. Stern, with respect to Paragraph 2 of
10 Exhibit A, was there any further discussion at this time
11 of sharing equally in the benefits to be derived from
12 your efforts?

13 MR. HILL: Excuse me, your Honor, the reference
14 to "this time," I wonder if we could have that clarified.

15 MR. HELLERSTEIN: Surely.

16 THE COURT: Would you, Mr. Hellerstein?

17 Q When was it that you gave this document to Miss
18 Van Stavern and to Mr. Oztemel?

19 A I would guess I gave it to Miss Van Stavern
20 August the 11th, and to Mr. Oztemel either the 11th or
21 the day after that. I'm not absolutely sure.

22 When you say "this document," the documents
23 I gave to each of them was this document without the
24 handwriting on it.

25 Q You said you "guessed." Is that your best

2 recollection?

3 A Yes, it is. I'm sorry.

4 THE COURT: Then you put the handwriting on it
5 on August 12th or 13th, is that right, and wrote the date
6 on top?

7 THE WITNESS: That's right.

8 Q Dr. Stern, the question was whether at around this
9 time August 10th through 13th, was there any discussion
10 further concerning sharing equally in the benefits Satra
11 was to derive from your efforts?

12 A No, there was not.

13 Q Was there any further discussion as to the amount
14 of expenses that would be filled in the box on Line 3 of
15 this document, Paragraph 3 of this document?

16 MR. HILL: Excuse me, Mr. Hellerstein, could I
17 have that question read again, your Honor?

18 THE COURT: Yes.

19 Would you read back the question, please, Mr.
20 Reporter?

21 (Question read.)

22 A No, there was not.

23 MR. HILL: Excuse me. I don't mean to interrupt,
24 but that provision in Paragraph 3 does not refer to expenses
25 at all by its terms.

2 THE COURT: I take it what you mean, Mr.
3 Hellerstein, was there any further discussion about the
4 amount that was to go in the blank in Paragraph 3?

5 MR. HELLERSTEIN: That is a much better way of
6 putting an inartfully drawn question.

7 MR. HILL: I think it's much more specific than
8 that. The language refers to fee. It does not refer to
9 expenses.

10 THE COURT: I will point out to the jury that
11 the blank there does not, at least by its terms, unless
12 there is some other explanation, indicate that it relates
13 to expenses, and the question should be whether there was
14 any further discussion about the amount to be inserted
15 in that blank.

16 MR. HELLERSTEIN: Let me put this again. I
17 think Mr. Hill and your Honor are both correct in that.

18 Q Was Paragraph 3 involving a question of fees?

19 A Paragraph 3 says until a certain time my expenses
20 and a fee to me, which was to be worked out, will be paid
21 by Satra.

22 Q And was there any definition in amount of the fee
23 that you would be receiving per month at this time?

24 A That had not been resolved at that time.

25 Q Was the cut-off point in terms of date agreed to

2 at that point in time?

3 A It had not been resolved at that time yet.

4 Q Now you said that you gave this document to
5 Miss Van Stavern and to Mr. Oztemel. What happened next?

6 A Miss Van Stavern had agreed it represented our
7 understanding of the night before, so I then showed the
8 document to Mr. Oztemel. He read it. He said, "Yes,
9 this is what we agreed upon the night before, he would like
10 to take the time to study the language of it since I had
11 done it without a lawyer; and he would like to decide or make
12 offers or what-have-you on the amounts to be put in the
13 blanks.

14 Q And did there come a time when he replied to you
15 concerning this document or any of the blanks in the
16 document?

17 A Yes.

18 Q When was that?

19 You are consulting your diary, Exhibit AAA for
20 identification?

21 A In the middle of the day of August 24th.

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2 Q What happened with respect to your conversa-
3 tion with Mr. Oztemel and this document Exhibit A on
4 August 24? This is 1971, Dr. Stern.

5 A That's right. He had been overseas since
6 the middle of August until just before August 24th and
7 this was the first meeting we had.

8 I asked him about entering out understanding
9 into an agreement, a legal agreement.

10 Q What did he say to you?

11 A He said that he had discussed this document
12 with the members of the executive committee; and they
13 did not agree that he should have entered into such an
14 agreement with me.

15 Q Did he say anything further or did you say
16 anything further at that time?

17 A He said we should discuss this with himself
18 and members of the executive committee.

19 Q Was such a discussion had?

20 A Yes, there was.

21 Q When was that discussion?

22 A That was immediately thereafter, namely, the
23 afternoon of August 24th.

24 Q Would you tell the Court and jury what was
25 discussed? First where was this discussion held?

2 A It was in Ara Oztemel's office.

3 Q Who else was present?

4 A It was Mr. Oztemel, Mr. Hanno Mott, his attorney.

5 Q Is that the gentleman at the far left?

6 A That is, I believe, Mr. Bill Hermann, I am
7 not absolutely sure of this one but I believe Mr. Hermann
8 was at that meeting. He is his outside accountant.

9 Mr. Schloss, who is the treasurer, and perhaps
10 Miss Van Stavern although she may have just walked in
11 and out.

12 Q Would you tell the Court and jury the substance
13 of the discussion that was had at the meeting identify-
14 ing as best you can who said what.

15 A Well, upon walking into a meeting like that,
16 and being notified we were going to discuss a re-negotiation
17 of agreement that I thought I had, I said well, why
18 don't I get a lawyer.

19 THE COURT: Just a minute. Mr. Hill?

20 MR. HILL: Your Honor, I don't mean to inter-
21 rupt Dr. Stern and I don't think I did, but I request
22 that the entire answer up until where Dr. Stern said,
23 "I said" ought to be stricken.

24 THE COURT: All right, I will strike the
25 answer.

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Stern-direct

2 Ladies and gentlemen, you are only concerned
3 with what happened, not with what Dr. Stern was thinking.

4 Q Dr. Stern, as best you can, could you leave
5 out the processes of your internal thinking, and say
6 what you said and what they said to you.

7 A I said, "You have your lawyer, your accountant.
8 Why don't I get a lawyer also."

9 He said, "You don't need a lawyer."

10 Q Who is he?

11 A Mr. Oztemel.

12 Q He said you don't need a lawyer?

13 A That's right.

14 Q What did you say?

15 A I shrugged. I mean I just -- all right. There
16 then --

17 THE COURT: In other words, you acquiesced,
18 is that right?

19 THE WITNESS: Yes, that's right. That's
20 right.

21 Q After your acquiescing, what more was said?

22 A They then proceeded to discuss the following:
23 Mr. Oztemel said that he's always open to a partnership,
24 pure 50/50 agreement.

25 Q Mr. Oztemel was referring to himself?

1 mbjw 4

Stern-direct

2 A That's right.

3 Q All right.

4 A However, as a result of discussions with his
5 executive committee, he now felt if he were to finance
6 me, namely, cover my expenses and fee for salary, he would
7 be entitled to more than just 50/50 share.8 Q Did he elaborate on what he meant by more than
9 a 50/50 share?10 A Yes, there was quite a discussion and they
11 finally got specific.

12 Q What did they say?

13 A They said they would be willing to draw up a
14 general --15 THE COURT: Can you attribute this statement
16 to me one or more of the people there.

17 THE WITNESS: I am sorry, yes.

18 THE COURT: Dr. Stern?

19 THE WITNESS: Basically the executive committee
20 was in an advisory role to Mr. Oztemel. He was the one
21 who made the statements.22 THE COURT: All right and what did he say
23 then?24 Q You are relating now what Mr. Oztemel said to
25 you?

2 A Yes.

3 Q Please continue.

4 A Mr. Oztemel said "There is always available a
5 pure 50/50 partnership but I don't finance you. If I
6 am to finance you" -- we were discussing arranging of
7 financing and the decision was made that I would be
8 financed for one year at the rate of \$7500 a month for
9 all my expenses, traveling, entertaining, you know, and
10 salary for myself, and an apartment in New York. That
11 there would be a general agreement which would hold for
12 several companies that we would have worked together
13 on in representing vis-a-vis Soviets.

14 As a specific example, in addition to a general
15 covering agreement, there were two specific companies
16 we had already begun discussions with. One was IBM,
17 the other was Stromberg-Carlson.

18 For those he said that a share of them, because
19 of my being financed, that sharing would be -- I would
20 get 25 percent of the revenues, and Satra would be 75
21 percent. I think.

22 Q I think you mentioned before but at the risk
23 of repetition was there a discussion of how much you
24 received per month to take care of salary and expenses.

25 THE COURT: I think Dr. Stern said \$75 a month.

2 A That's right.

3 Q So in other words, Mr. Oztemel was telling
4 you that as to IBM and Stromberg-Carlson the division
5 of sharing would be 75 percent for him 25 percent for
6 you, and you would be paid \$7500 a month?

7 A That's right.

8 Q That is \$90,000 a year?

9 A Yes.

10 Q Was anything more said at this meeting that
11 you recall?

12 A I was asked to consider the two alternatives,
13 the 50/50 one whereby I get no financing, and the one we
14 have just discussed. I was asked to see if I could get
15 independent financing so that I could accept the 50/50
16 one, because Mr. Oztemel would rather not have to finance
17 me.

18 Q Did he say that to you?

19 A Yes, he did. He said it would be easier for
20 him if they did not have to advance me a year at \$7500
21 a month.

22 Q What did you say to that?

23 A I said I am going back to California. I will
24 discuss this with my family, and my friends; decide whether
25 I can get independent financing, so I could take the

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Stern-direct

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2 50/50, or whether I would accept a lower share of revenues
3 but be guarantees a one-year covering of expenses and
4 salary.

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2 Q You said that Mr. Oztemel, state thated that
3 in preference you take the 50/50 sharing, did you state
4 any preference as to him?

5 A I said I really couldn't answer until I found
6 out whether I was able to finance myself, instead of
7 taking financing from him. I said I would explore it.

8 Q Was anything more said at this meeting that
9 you had had?

10 A Not that I can recall.

11 Q Was anyone supposed to write up what had been
12 discussed?

13 A Oh, of course. This understanding, Mr. Oztemel,
14 then directed Hanno Mott to take this understanding and
15 see that it was put into a document.

16 Q Mr. Mott was Mr. Oztemel's lawyer?

17 A That's right.

18 Q I show you Exhibit B for identification, Dr.
19 Stern. I ask you if you can identify it.

20 A Yes. This is the document which would be the
21 cover document wherein I would receive \$7500 a month
22 for a year; and addended to this would be negotiated
23 sharings of revenues, of companies on a case by case.
24 But in particular, there was the verbal offer that relative
25 to IBM and Stromberg, which we were already actively

1 amjw 2 >
2 working on, I would get 25 percent and he would get the
3 75 percent.

4 Q Was that relationship of 25 percent and 75
5 percent, under the option where he would be financing
6 you and under the option of joint participation?

7 A No. That's only where I would receive
8 \$7500 a month. In other words, the penalty I would have
9 to assume in return for accepting \$7500 a month for
10 the period of a year, would be that my share of revenues
11 would go down from 50, down to 25.

12 THE COURT: I don't see any reference to
13 that in this exhibit.

14 Is there testimony that there is a reference
15 to that in the exhibit?

16 Q Could you answer Judge Lasker's question?

17 A You are right. This exhibit was the cover
18 for all ensuing agreements.

19 THE COURT: What do you mean by a cover?

20 THE WITNESS: Let me show you specifically.

21 Yes. If you notice in paragraph No. 1.

22 THE COURT: Yes.

23 THE WITNESS: The second sentence said that
24 each company -- and so on.

25 THE COURT: Yes.

2 THE WITNESS: In other words, that merely
3 pertained to the fact that they were going to finance.
4 That's all this says. That's right.

5 Q Is the document that Mr. Mott gave you on
6 or about the date that this was written, August 25th?

7 A Yes, it is.

8 MR. HELLERSTEIN: I offer it into evidence.

9 THE COURT: Any objection, Mr. Hill?

10 MR. HILL: No objection.

11 THE COURT: All right. Received in evidence.

12 MR. HELLERSTEIN: May I give it to the jury?

13 THE COURT: Yes. Let them read it through.

14 (Plaintiff's Exhibit B was received in
15 evidence)

16 (Pause)

17 Q Dr. Stern, after you received this document
18 from Mr. Mott, what did you do?

19 A You mean specifically or by action, I'm
20 not sure I understand.

21 Q What did you do with respect to this document?

22 A I went to California, home. I had a series
23 of meetings with my family and friends to assess whether
24 or with what difficulty I could raise independent
25 financing and to get advice on which of the two options

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1 amjw 4

Stern-direct

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2 I would take.

3 Q Did there come a time when you spoke with
4 Mr. Oztemel and conveyed any suggestions, ideas, accept-
5 ances or rejection to him?

6 A Yes. I phoned him from my home in California
7 to his home in Greenwich or somewhere like that on
8 Saturday the 28th of August, 1971.

9 Q What did you say to him and what did he say
10 to you?

11 A I said that for me to get independent
12 financing would raise additional complications, there-
13 fore, I'd be advised to accept the alternative offered
14 by this agreement, namely --

15 Q Referring to Exhibit B, the document that
16 was just read by the jury?

17 A Yes, that's right. Namely, I should accept
18 \$7500 a month for a year and with relation to IBM and
19 Stromberg, although the offer had been that I get 25
20 percent, would be go~~to~~ for 30.

21 He answered, "No, he wouldn't." I said,
22 "Well, you drive a hard bargain," but I accepted. We
23 said another few words and decided to speak again on
24 Sunday the 29th, to see if there were any loose ends.

25 We spoke again by phone from my home in

2 California, to him home here. And there were no loose
3 ends. We had agreed that I would get \$7500 a month for
4 a year. I would receive the 25 percent of the revenues,
5 if we were able to get IBM and Stromberg as clients.
6 And I would actively continue to search for other clients.

7 Q Did Mr. Oztemel say to you, in words or
8 substance, I agree?

9 A He said even stronger than that.

10 Q As best you can recall, what did he say?

11 A Oh, something like "Let's hope we'll make
12 a lot of money together." You know, things like that.
13 But he definitely agreed. That had been done the day
14 before.

15 Q On the 7th?

16 A That's right.

17 Q What happened next with respect to this
18 agreement and your relationship with Satra?

19 A I was back in New York for a series of other
20 meetings. And before I was able to get together with
21 Mr. Oztemel on signing the agreement that we had made --
22 am I doing something wrong?

23 THE COURT: No.

24 A He looks like he wants to object.

25 THE COURT: When he gets up.

1 amjw 6

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2 A I'm sorry.

3 MR. HILL: I'm just waiting, your Honor.

4 A You are making me nervous. I'm sorry.

5 THE COURT: You came back to New York?

6 THE WITNESS: I came to New York. Mr. Hanno
7 Mott, the in-house attorney for Satra, together with
8 Mr. Bill Hermann, the outside accountant, to Satra,
9 both of whom I believed to have been members of the
10 executive committee, they convened a meeting with me.11 MR. HILL: Excuse me, your Honor. I wondered
12 if we can fix a date. This refers to some period after
13 the conversation of the 29th.

14 THE COURT: Within a day or two of that date.

15 THE WITNESS: To the best of my knowledge,
16 this was either very late on Monday the 30th or more
17 likely during the morning of Tuesday, the 31st. All
18 right.

19 THE COURT: Where did you meet?

20 Q Proceed.

21 A This was at the Satra offices.

22 THE COURT: Just the three of you?

23 THE WITNESS: Yes. It was Hanno Mott's office.

24 Q What did Mr. Mott, and Hermann say to you
25 and what did you say to them?

2 A Mr. Mott and Mr. Hermann said that relative
3 to this agreement that I had entered into with Mr.
4 Oztemel, the executive committee had discussed it and
5 they wanted to discuss with me, some minor modifications.

6 Q Did they say what they meant by minor modifi-
7 cations?

8 A Yes. In particular they said the following:
9 If Satra were to have IBM, Stromberg or any of these
10 other companies under our agreement as clients; if and
11 when the client would make certain sales to the Soviets,
12 then obviously, then Satra would incur certain expenses.

13 They felt it only reasonable that Satra
14 should be reimbursed for those expenses associated with
15 the sales and that should be entered as part of the
16 agreement.

17 I said, but we have an agreement, but they
18 wanted to discuss it. I then went on and I said, Well,
19 if you are speaking now about the expenses incurred by
20 Satra associated with the sales to the Soviet's, you
21 will be speaking about actuals. You know, for me to
22 agree to reimburse for actuals, I would have to audit
23 your books.

2 Q What did they say?

3 A Well, may I wait to see what's happening?

4 Q You just go ahead and answer the question.

5 You don't have to pay attention to Mr. Hill. If Mr. Hill
6 wants to make an objection, he will voice it.

7 THE COURT: If he makes an objection, stop until
8 I rule.

9 Q What did Mr. Mott and Mr. Hermann say to you?

10 A I said, "If I'm to be responsible for the actual
11 expenses incurred, I'm going to have to audit the books."

12 The accountant and the attorney said, "Oh, no.
13 You're not going to audit the books of Satra."

14 So I said, "Then what are you talking about?"

15 They said, "Well, in lieu of your auditing and
16 speaking about actual expenses, what we wanted to do was to
17 get an agreement with you beforehand on an expense reimburse-
18 ment schedule, the schedule of reimbursement of expenses."
19 Then they said it would be a function of the revenues, rather
20 than actual expenses.

21 Q You said expense would be a function of revenues?

22 A In other words, they wanted to agree beforehand
23 on a schedule. In fact, they showed two columns in the
24 numbers, expenses and revenues. The idea they offered
25 was, rather than be reimbursed for actual expenses, why

1 ammch 2

2 don't we agree beforehand that for these revenues
3 that are coming in, they'll be a reimbursement of this much
4 expense; instead of after the fact, looking at the actual
5 expenses from an audit.

6 In other words, they said it would work the
7 following way: If there -- if there are no revenues coming
8 in, there is no expense reimbursement. As the revenues
9 begin to come in, we would share, according to the agreement
10 but my share would be reduced somewhat and theirs would
11 go up somewhat, by virtue of them having to be reimbursed
12 for expenses according to this schedule vis-a-vis revenues.

13 Q Was there any period of time that was discussed
14 in relationship to the revenues?

15 A Yes. This would be because the schedules were
16 of varying function rather than a straight one.

17 Q What do you mean by "varying function"? Does
18 that mean like progression, first so much of a percent, then
19 the percent would be reduced?

20 A It would change, that's right. They wanted it
21 applied annually. I can give you more specific --

22 Q Go ahead, state the conversation as best you recall
23 it.

24 A The highest gradient --

25 Q Could this be plotted on the blackboard?

1 ammch 3

Stern-direct

2 A I think that's the easiest way I can do it.

3 (Pause.)

4 Now do you want me to show the actual numbers
5 or just the general chart? I can do either.6 Q You illustrate the discussion that you had with
7 Mr. Hermann and Mr. Mott.8 THE COURT: You might as well use the actual
9 numbers.10 A Then I'll do the actual numbers. That's what
11 I asked. All right.12 If we were to plot here a total annual revenues,
13 that is, the money that would come in to us from clients.
14 And we would plot there, total annual expenses to be
15 reimbursed, these are in thousands of dollars. This number
16 is 250, five hundred, 750, one million, and I'll put two
17 million here. All right.18 And across here, I am now going to plot again,
19 100,000, 200,000. The points on the columns were these,
20 namely, the representation was this. Now the reason it
21 was annual -- let me to it in a counterway. If it were
22 not annual, then after awhile there's no additional expense
23 reimbursement. But at the beginnings, there are higher
24 expense reimbursements. So they wanted the schedule to be
25 reapplied annually.

1 ammch 4

2 Q So each year, in other words, this would be done
3 anew?

4 A That's right.

5 Q There would be no carryover from prior years?

6 A No. No.

7 The way again, we start out -- and the entire
8 reason for this was in lieu of actual expenses, which would
9 have negated auditing the books. They gave me two columns
10 of numbers which was an expense reimbursement schedule
11 annually, where the expenses to be reimbursed annually were
12 a function of the revenues annually. No revenues. They
13 don't get reimbursed. Any expenses, as we begin to get
14 revenues -- we begin the sharing, they get reimbursed
15 additionally. In other words, they take away from me and go
16 to them, according to prearranged schedule, as I have
17 indicated.

18 Q Dr. Stern, let me just see if we understand this.
19 Let's suppose in one year there is no income and in the
20 second year there is \$250,000 of income. This annual
21 schedule expense shows \$100,000.

22 Is there to be deducted \$100,000 or \$200,000?

23 A Annually, we start anew.

24 Q Each year is new?

25 A Each year you start new, in order that you start o

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1 anmch 5

Stern-direct

2 the steeper gradient of the curve, which was there
3 advantage.

4 Q Supposing there is not \$250,000 of income, but
5 something less, say \$50,000 of income?

6 A The easiest way, if you look at the ratios here,
7 there are 250 to 100, or 25 to 10.

8 Q What percentage is that?

9 A 40 percent. In other words, during this
10 initial -- here, let me put it the following way:
11 Zero revenues, zero expense to be reimbursed. When there
12 is \$25,000 revenue, there is \$10,000 to be reimbursed.
13 When there are \$50,000 revenues, there are \$20,000 reimbursed,
14 until you get up to \$250,000 revenues and \$100,000 to be
15 reimbursed. From then on the slope of the line wasn't
16 as high.

17 Q Meaning the percentage is less?

18 A That's right. And it gets less and less. That
19 is why they wanted to be reinitiated anew every year.

20 Q What did you say to Mr. Mott and Mr. Hermann
21 when they --

22 A Should I stay here? You want me to go back?

23 THE COURT: Are you finished with the demon-
24 stration?

25 THE WITNESS: I believe I have.

1 amunch 6

Stern-direct

2 THE COURT: Return to the witness chair.

3 (Witness complies.)

4 A Once we discussed it enough so we were sure we
5 understood each other, I said, you know, in order to
6 avoid any confusion in mathematics, there are a couple of
7 words that are applicable here. For the columns they
8 showed me, I said these should be labeled in incremental
9 annual expenses against incremental annual revenues.

10 Q And does the word "incremental" denote what
11 you have plotted on the blackboard?

12 A Yes.

13 I will explain it, if you want.

14 Q It's clear. Let's move on.

15 A Okay.

16 Q What happened next in the discussion?

17 A All right.

18 I then said, "I understand what you are talking
19 about. I have an agreement with Ara Oztemel. I'm not
20 going to agree to anything. I'll be seeing him later on
21 in the day. Let me think about this. I'll discuss it with
22 him."

23 Q Did there come a time when you and Mr. Oztemel --

24 A May I finish?

25 Q I'm sorry.

2 A They then come back in a half-hour.

3 THE COURT: You told them to come back in a half-
4 hour?

5 THE WITNESS: No, sir. They left and they came
6 back in a half-hour. They had had another discussion
7 with the executive committee.

8 Q They told you that?

9 A Yes, sir. And in addition to wanting an agreement
10 on an expense reimbursement schedule, the executive
11 committee wanted to discuss with me the fact that the
12 \$7,500 a month for the period of a year should be open to
13 some modification, namely, \$7,500 reduced and a year
14 reduced.

15 Q So they wanted a further modification?

16 A Yes.

17 Q Who did you say?

18 A I said, "Whoa." I said, "Look, I've entered into
19 an agreement with Oztemel in good faith. I think this
20 agreement he wants to live with. I know I do. I'm going
21 to be seeing him this afternoon. I don't want to discuss
22 this any further with you guys. Let me discuss it with
23 him."

24

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4/1/74
PM 3a

1 mbmch 1

Stern-direct

2 Q Was there anything more to this conversation?

3 A No.

4 Q During this whole period of time, Dr. Stern,
5 had you been involved in meetings with IBM?

6 A Yes.

7 MR. HILL: Will you fix the period of time,
8 your Honor?

9 THE COURT: What period?

10 MR. HELLERSTEIN: Just this period of time we are
11 talking about, the month of August 1971.

12 A Yes.

13 MR. HELLERSTEIN: With the Court's permission,
14 I would like to defer testimony about that to a later
15 time and continue with the discussions between Dr. Stern
16 and the Satra people?

17 THE COURT: All right.

18 Q Now you said you testified that you told Mr.
19 Mott and Mr. Hermann that you were going to discuss points
20 they raised with Mr. Oztemel.

21 A Yes.

22 Q Did there come a time when you had this discussion?

23 A Yes.

24 Q Will you fix the time, please?

25 A This was just about 5:00 o'clock the afternoon

152 A

2 of August 31st.

3 THE COURT: Is that the same day you met with
4 Mr. Mott and Mr. Hermann?

5 THE WITNESS: Yes.

6 O Where was the meeting?

7 Well, it began while we were walking back from
8 another meeting and ended -- and then the meeting continued
9 in Mr. Oztemel's office; so --

10 Q With whom was this other meeting?

11 A Well, Mr. Oztemel and I had a 4:00 o'clock at
12 IBMI on the afternoon of August 31st. After that meeting,
13 going back to the Satra offices, I raised the issue of why
14 don't we sign off on the agreement we had reached on the
15 week end.

Q Are you referring to the document that has been
marked Exhibit B which the jury has in its possession?

18 A Yes, to go with the percentages we agreed on
19 IBM and Stromberg.

Q And those percentages were?

21 A 25 per cent for me and 75 for Satra.

22 Q This is under the plan where you would be
23 financed?

24 || A That's right.

25 Q What did Mr. Oztemel say to you?

1 mbmch 3

Stern-Direct

2 A He said the same thing he had said before.

3 Q Say it in words.

4 A I'm sorry.

5 Q What he had said.

6 A He said his executive committee wanted to discuss
7 some modifications to the August 25th document, which
8 he agreed on, and we'd better talk to them about it.

9 Q What did you say?

10 A By the time we got back to the Satra offices, I
11 said, "Look, Ara, we had an agreement reached a couple of
12 weeks ago on August 10th. You reneged on that, your
13 so-called executive committee. We had an agreement on the
14 night of the 25th. You reneged on that, your so-called
15 executive committee. You own like 80 percent of Satra.
16 This executive committee is an excuse. You know it and
17 I know it."

18 I said, "I don't want to negotiate with you any
19 more. You are a -- well, you are a cheat. You are renegeing.
20 I refuse to negotiate with you any more."

21 I said, "If you want to do business with me,
22 you make me any offers you want, but you put them down in
23 writing and you sign your name. Otherwise, I will not
24 negotiate with you any more."

25 Q What did Mr. Oztemel say to you?

154 A

1 mbmch 4

Stern-direct

4 MR. HILL: Excuse me, your Honor. Could we fix
5 whether or not Mr. Mott and Mr. Hermann were present when
6 Dr. Stern advised Mr. Oztemel that he was a cheat?

7 MR. HELLERSTEIN: If your Honor please, I think
8 Mr. Hill will have ample opportunity to clarify these points
9 when he gets up to cross-examine.

10 THE COURT: I don't doubt he will, but I don't
11 think it would hurt to tell whether there were people with
12 you up to the point you have reached now.

13 THE WITNESS: I don't think they heard me call
14 him a cheat. They were there when I said he reneged on
15 the agreement; they were there when I said, "I refuse to
16 negotiate with you any more. You have reneged now a
17 couple of times."

18 They were there when I said, "Any offers you want
19 to make to me from now on, I don't negotiate. You decide
20 what you want, write them down," and I'm very sorry but
21 I said, "Sign your God-damn name." They heard that.

22 Go on, Dr. Stern.

23 A Whereupon he acceded to my request, asked me to
24 stay in the room. I may have chosen the wrong word in
25 English, "accede." Is that --

1 mbmch 5

Stern-direct

2 Q Did he say whether he -- what did he say to you?

3 A He asked me to stay in the room, and Hanno Mott and
4 Bill Hermann were there and they discussed another offer
5 to me.

6 Q What did they say?

7 A It ended up that Mr. Oztemel wanted to offer me
8 two alternatives in writing, and he said, "I so directed
9 Mr. Mott to write them up."10 The two alternatives were the following: One,
11 no financing for me by Satra, just a pure 50-50 partnership.12 Number two, they would finance me for something
13 like six months at something like \$6,000 a month, but here
14 I would only get 30 per cent of the revenues.15 This offer was applicable to the cases at hand,
16 namely, IBM and Stromberg.

17 Q And did someone say what you just said?

18 A Mr. Oztemel summed up their discussion while I
19 was there in his direction to Hanno Mott to write that down
20 in agreement form.

21 Q Did Mr. Mott so write it down?

22 A Yes.

23

24

25

Take 3b pm 1 MBjw 1

Stern-direct

4/1 2 Q What happened next?

3 THE COURT: I take it he didn't write it
4 down right then and there? Thereafter he did it?5 Q Where was he? Did he write it down right
6 then and there?7 A We adjourned the meeting. Mr. Oztemel went
8 into his sauna and Mr. Mott went into his office, to
9 write it.

10 Q Where did there take place, incidentally?

11 A This was at the Satra offices, everything.

12 Q Where are those located?

13 A 475 Park Avenue South.

14 Q Was Mr. Oztemel's sauna in his office?

15 A Yes.

16 Q Mr. Mott had a side office there, is that
17 right?18 A Behind his office there are many things. One
19 of which is a sauna. It's an integral part of his own
20 office suite.

21 Q All right.

22 And what happened next?

23 A Mr. Mott made a draft. He showed it to me
24 and I reminded him he left out several of the things
25 that Mr. Oztemel directed him to. For instance, he

1 mbjw 2

Stern-direct

2 wrote it only about IBM, he left out about Stromberg-
3 Carlson and a couple of other words.

4 Then Mr. Mott finalized it and he gave the
5 final document to me.

6 Q What did you do?

7 A I waited for Mr. Oztemel to get ready and
8 at 7:00 o'clock that evening I went in to him with the
9 document.

10 Q Where was Mr. Oztemel?

11 A He was then standing in his office.

12 Q You brought this document to him?

13 A That's right.

14 Q What did you say to Mr. Oztemel and what did
15 he say to you?

16 A I handed him the agreement. He scanned it -
17 well, he read it. In fact so meticulously he initialed
18 a couple of the typographical errors.

19 Then he made ready to sign and he looked
20 up and he said, "I hope now you will take the pure
21 50/50 partnership with no financing by Satra."

22 I answered "By now it's become very, very
23 complicated, I don't know."

24 He said, "What don't you know?"

25 I said, "Well, in the pure 50/50 sharing,

2 I do not get the fee for my expenses and salary and
3 what have you. I then have to look for a source of
4 current income -- by current income I mean income every
5 month or quarterly or what have you. I have to now look
6 for a course of current income from our revenues from
7 the clients."

8 Now, the normal arrangements with clients are
9 in two parts: One, current income in the form of
10 retainers or advances --

11 Q Are you saying this to Mr. Oztemel?

12 A We had had discussions about that before,
13 all during the time; so my reference to this in this
14 discussion was just using the key words; you know,
15 rather than go in the explanation I am doing here. I
16 am now summarizing a length of your understanding.

17 THE COURT: If I understand what you said,
18 you did not know whether you could go for the 50/50
19 deal because you didn't know whether you'd be able to
20 live.

21 THE WITNESS: Yes, but then I went further.
22 I said, "I need current income. This new agreement
23 you are offering, even for the 50/50 sharing, that is
24 going to be reduced by the expense reimbursement schedule.
25 I am not that worried reducing the commission by that

2 expense reimbursement schedule because those are future
3 income also, but in order to be able to live, I have
4 to look to current income, the retainers or the advances
5 and I don't want those to be reduced by this expense
6 reimbursement schedule."

7 He said absolutely I am right. He said,
8 "Now, that reimbursement schedule really is logically
9 associated with expenses on sales and the future com-
10 missions."

11 He said, "There should not be any expense
12 reimbursement applicable to the current income like the
13 retainers."

14 I said, "Wait a minute. You say that. Write
15 it down. Sign your name."

16 He said, "Sure."

17 He then added on the bottom a reference to
18 this discussion and we signed the agreement.

19 Q I show you what has been marked Exhibit C
20 for identification. I ask you if you can identify
21 that document?

22 A This is the agreement I was speaking about
23 just now.

24 THE COURT: Actually this is just a proposal,
25 right?

2 THE WITNESS: I am sorry, yes, this is the
3 offer that I was speaking about just now.

4 THE COURT: And the writing that you are
5 referring to that Mr. Oztemel did is on the last page
6 on the bottom of the schedule; is that right?

7 THE WITNESS: Yes, sir, it is.

8 MR. HELLERSTEIN: I offer it in evidence,
9 your Honor.

10 THE COURT: I take it there is no objection.

11 MR. HILL: No objection, your Honor.

12 THE COURT: All right. Received.

13 (Plaintiff's Exhibit C was received in
14 evidence)

xxx
15 MR. HELLERSTEIN: If your Honor please,
16 I would like to give copies to the jury and I will take
17 back at this time the documents that the jury has in
18 its possession.

19 THE COURT: Very good.

20 (Documents handed to the jury)

21 THE COURT: When the jury is finished look-
22 ing at Exhibit C, I think we might as well take an
23 afternoon recess.

24 MR. HELLERSTEIN: Why don't we do that now?

25 THE COURT: I would rather they look at it

1 mbjw 6

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2 first.

3 MR. HELLERSTEIN: I was planning to go into
4 some of the points and --5 THE COURT: Why don't you lay the copies on
6 the top of the rail, ladies and gentlemen, and when you
7 come back you can look at it.

8 We will take a ten-minute recess now.

9 (Recess)

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Stern-direct

2 (In open court - jury present)

3 MR. HELLERSTEIN: Your Honor, we have made
4 a sketch of what's on the blackboard and I offer it
5 for identification as quadruple E.

6 MR. HILL: No objection.

7 Your Honor, so that the record is clear,
8 Mr. Oztemel has arrived and is seated in the back of
9 the courtroom.

10 (Plaintiff's Exhibit EEEE was marked
11 for identification)

12 MR. HELLERSTEIN: May I read section of
13 this to the jury?

14 THE COURT: Yes, you may.

15 MR. HELLERSTEIN: This is a reading, members
16 of the jury, of certain paragraphs of this document,
17 Exhibit C, that you have copies of. It is a memorandum
18 on Satra Corporation letterhead to Marvin Stern:

19 "In connection with the proposed joint
20 venture with IBM and Stromberg-Carlson, we offer you
21 the following two alternatives for our relationship.
22 Either one is acceptable to us."

23 Members of the jury, I will read proposal
24 number 1-A: No financing by Satra. B: Your compensa-
25 tion will be 50 percent of gross revenues received from

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1 amjw 2 Stern-direct

2 IBM and Stromberg-Carlson by Satra, after deduction of
3 expenses on an annual basis as per attached schedule.

4 These commissions will be payable for all amounts accrued
5 by Satra, during the term of the agreement signed by
6 Satra with IBM and S-C, plus all commissions that may
7 be earned from sales then under negotiation."

8 Q Is that Stromberg-Carlson, Dr. Stern?

9 A Yes, it is.

16 C. All expenses for the project will be
17 advanced by Satra to be recouped out of earnings, if
18 any, including your additional expenses which will not
19 include amounts attributable to your commuting from
20 Los Angeles to New York.

21 Q Was it your plan to move from Los Angeles
22 to New York?

23 A No, it was not.

Q Your family was to remain in Los Angeles?

25 || 3 Yes.

1 amjw 3

2 Q Was this sentence directed to this aspect
3 of the situation?

4 A Yes, it was.

5 MR. HELLERSTEIN: "All foreign travel by you
6 in connection with this venture must be approved by
7 Satra."

8 Q Would you direct your attention to the
9 right-hand margin?

10 Could you identify that mark?

11 A It was a mark that Mr. Oztemel made on the
12 document before he signed it. I believe it stands
13 for A.A.

14 MR. HELLERSTEIN: "D. All personnel to be
15 hired or assigned by Satra to the project will be Satra's
16 sole responsibility."

17 Members of the jury, would you turn to page
18 3 of this document?

19 Q Dr. Stern, can you identify the schedule
20 that is page 3 of the document?

21 A Yes.

22 Q What is it?

23 A That is the expense reimbursement schedule,
24 I spoke about beforehand.

25 Q Is that the one you described on the blackboard?

1 amjw 4

Stern-direct

2 A Yes, it is.

3 Q I see the word, incremental annual revenue
4 is a title over one column. And the words incremental
5 annual expenses over the second column.6 Is this word incremental the word you put
7 on this document?8 A It's the word I suggested be put on it and
9 we agreed to put on it. I must say that it was in an earlier
10 discussion and apparently it was incorporated here and
11 added on to here.12 Q And then I see the columns of numbers and
13 are those numbers meant to accomplish what you've
14 illustrate on the blackboard by the graph?

15 A They are the same.

16 Q Now I see some handwriting; whose handwriting
17 is this?18 A This was on by Ara Oztemel, just before he
19 signed it.

20 THE COURT: You saw him write it?

21 THE WITNESS: Yes, sir.

22 Q Is that his signature below the handwriting?

23 A Yes it is.

24 Q Did you see that signature affixed to the
25 document?

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Stern-direct

2 A Yes, I did.

3 Q Was this paragraph in relation to the
4 discussion of retainers that you earlier related to
5 the jury?

6 A Yes.

7 MR. HELLERSTEIN: Members of the jury, I
8 will read the paragraph to you:9 "In alternate 1, any retainers received will
10 be divided 50/50 on the income as above scheduled.
11 This option is valid until the 9:00 a.m., Thursday
12 morning, September 2, 1971. Signed Ara Oztemel."13 Q Referring to the first paragraph of this
14 handwriting, Dr. Stern, reading in alternate 1, any
15 retainers received would be divided 50/50 on the income
16 above scheduled, was there a discussion about these words
17 and what this was supposed to mean?18 A There was a discussion that led up to this,
19 the choice of the words were his.20 Q Was that discussion that you related just
21 before the break to the jury?

22 A Yes, it is.

23 Q That is that retainers were not to be subject
24 to the schedule of expenses?

25 A That's right.

1 amjw 6

Stern-direct

2 Q Now, moving ahead, Dr. Stern. You say you
3 were given this document by Mr. Mott who presented it
4 to Mr. Oztemel and got his signature on it.

5 What happened next?

6 A I took it. I went to my hotel. I called
7 my wife. We had a lengthy discussion over whether I
8 would accept any alternative and if I would, which one
9 would we accept from the point of view of family risk,
10 in living and things like that.

11 Q Following your deliberations, what did you
12 do next?

13 A We came to a decision to take the risk of
14 accepting alternative 1, which was no financing by Satra,
15 but 50/50 sharing.

16 Q Was that the proposal I read to the jury
17 a few minutes ago?

18 A That's the one.

19 With the understanding, of course, that
20 there was no application of the expense reimbursement
21 schedule to the current income, like the retainers.

22 Q And did you do anything in relation to Mr.
23 Oztemel?

24 A The first thing, the morning of September 1st,
25 I --

2 THE COURT: Which was the morning after
3 you received this; is that right?

4 THE WITNESS: Yes, sir.

5 Q The very next day?

6 A The very next day I wrote out my acceptance
7 of alternative 1. I made copies of it, xeroxed. And
8 I asked to see Mr. Oztemel.

9 I was advised I couldn't see him until some-
10 time after lunch. But after lunch, I gave him my written
11 acceptance.

12 Q I show you what has been marked as Plaintiff's
13 Exhibit D for identification, Dr. Stern.

14 Just look at the top page. I ask if you can
15 identify it.

16 A Yes, that's the written acceptance I just
17 spoke of.

18 Q And what did you do with that?

19 A I gave this original to Mr. Oztemel after
20 lunch on September 1st.

21 Q Did you have a conversation with him?

22 A Yes.

23 MR. HELLERSTEIN: Before getting into the
24 conversation, let me offer this document into evidence.

25 Your Honor, this is attached to a copy of

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what has already been marked as Exhibit C and received
into evidence.

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7

It is that format with the original of Dr.

Stern's handwriting and the copy of the August 31st
proposal was stabled together in Satra's files and is
produced exactly as how it was kept in Satra's filed.

8

9

THE COURT: I have no objection to receiving
it this way, do you have any?

10

MR. HILL: No.

11

12

THE COURT. All right, it's received as

presented.

13

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MR. HELLERSTEIN: Your Honor, tomorrow I
will bring looseleaf books so each member of the jury
can have the book in tact with a set of exhibits.

16

THE COURT: All right.

17

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(Plaintiff's Exhibit D is received in

evidence)

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PM 4b

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Stern-direct

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2 MR. HELLERSTEIN: Exhibit D reads "Memorandum
3 to Mr. Ara Oztemel, dated September 1971, reference your
4 memorandum to me, dated August 31st, offering two alternatives
5 for our relationship in connection with the proposed joint
6 venture with IBM and Stromberg-Carlson. Please be
7 advised I accept Alternative 1, signed Marvin Stern."

8 Q Alternative 1 was which of the two proposals?

9 A The one where I would receive no financing and
10 we would share 50-50.

11 Q What happened next, in terms of your relationship --
12 I'm sorry, I had begun to ask you of a conversation that
13 you had with Ara Oztemel when you gave him this document,
14 Exhibit D.

15 A He accepted it. He said he was glad I could see
16 my way to accepting the one without the financing. It made
17 it easier for him. He understood I was very much concerned
18 about taking the risk of not having any -- my expense and
19 salary be covered. But he wants me to know from his very
20 broad experience in making agreements that once one makes
21 a decision one should stop fretting about it and move on
22 from there and not to think that you made the wrong decision.

23 Q Dr. Stern, I would like to move you back in time
24 and discuss with you the occurrences relating to IBM.

25 When was the first time that you had a discussion

1 2 ammch

Stern-direct

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2 with anyone concerning business that related between
3 IBM and Russia?

4 A You are speaking specifically IBM, rather than
5 the generic kind of business?

6 Q Answer the question as best you can, if you
7 understand it.

8 A IBM --

9 Q Did you have a discussion with anyone where IBM
10 came into the conversation, concerning possible business
11 with Russia?

12 A Yes.

13 Q When was that?

14 A On June 23, 1971.

15 Q With whom was that?

16 A Ambassador Llewelyn Thompson.

17 Q Was Ambassador Llewelyn Thompson the ambassador
18 of the United States to Russia?

19 A At some time, yes.

20 Q At the time you spoke with him, was he ambassador
21 to Russia?

22 A No, he was not, but one still uses the title
23 ambassador.

24 Q Where was the discussion held?

25 A At the Plaza Hotel, here in New York.

2 Q What was said by you and what was said by
3 Ambassador Thompson?

4 A Well, the meeting really concerned other issues.

5 Q In the course of the meeting, did a conversation
6 come about that related to IBM?

7 A As a result of the discussion of these other
8 issues, as Ambassador Thompson heard me relate my
9 discussions --

10 Q Go on until Mr. Hill says something. Just keep
11 talking.

12 A As the ambassador heard me relate my discussions
13 with a Soviet vice-chairman of the state planning and
14 heard how interested they were in this general field, he
15 asked me why do I not speak with IBM about the possibility
16 of their getting involved in doing business with the
17 Russians.

18 Q What did you say to Ambassador Thompson?

19 A I said, number one, the U.S. has still not yet
20 opened up to do the business with the Russians that much.
21 Number two, the kind of equipment IBM would have to offer
22 might not be allowed.

23 THE COURT: "Not allowed" by the United States?

24 THE WITNESS: Not allowed to be exported to the
25 Soviets by the U.S.

1 4 ammch

Stern-direct

2 A Number three, I had heard that IBM sometime
3 earlier had refused to do business with Russia.

4 And, number four, even if the U.S. were to open
5 up and they were to allow that kind of equipment, and IBM
6 wanted to do business with the Russians, I don't understand
7 why they might want to discuss with Satra any relationship.

8 Q Did you know then or at any time later whether
9 there was any relationship between Ambassador Thompson
10 and IBM?

11 A He then went on to identify the fact that he was
12 a consultant to the chairman of the board of IBM World
13 Trade.

14 Q You mentioned Satra in terms of this conversation.
15 What was the relationship of Satra to the conversation that
16 you had with Ambassador Thompson?

17 A I was in the course of my consulting for Satra
18 on the Kama River project. I had sought out Llewelyn
19 Thompson to gain some guidance or advise from him relative
20 to the rate at which the detente might progress and
21 relative to the trade expansion.

22 Q I caused you to digress when I asked you whether
23 Ambassador Thompson identified himself as a consultant
24 to IBM. What did he say and what did you say?

25 A He said he was a consultant to Mr. Jones, the

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Stern-direct

2 chairman of the board.

3 Q Is that Mr. Gil Jones?

4 A Mr. Gilbert Jones. He said that it was very
5 likely that the U.S. would open up to do business with
6 the Russians consistent with that, it was very possible
7 that IBM might reconsider its own status and might
8 consider going into doing business with the Russians,
9 and that since the British were already in there, IKL,
10 International Komputer Limited, a British firm, was already
11 in there, if IBM wanted to go in, they may want to go in
12 a hurry and they may want to consider all the help they
13 could get.

14 Q Did Ambassador Thompson have any suggestions for
15 you?

16 A I said, "I don't know Mr. Jones." He immediately
17 offered to give me an introduction.

18 Q And what did he say to you?

19 A The way it was left, he would telephone Mr. Jones
20 or speak with him in person, I don't know, and introduce
21 the fact that this discussion had been had between us and
22 that I should, after a couple of weeks or so, I should call
23 Mr. Jones and speak with him.

24 Q Did you report this conversation to Satra?

25 A Yes, sir.

2 Q To whom?

3 A The following day at the dining room, I brought
4 it up --

5 THE COURT: Satra's dining room?

6 THE WITNESS: At Satra's dining room.

7 Q Does Satra have a dining room as part of its
8 office?

9 A Yes, it does.

10 Q To whom did you relate this conversation?

11 A To whomever was at the dining room table; in
12 particular, I know that Mr. Schloss, who is the treasurer
13 of Satra, was there, Mr. Giffen was there, and I'm pretty
14 sure Miss Van St. vern was there.

15 Q Was Mr. Oztemel there?

16 A I don't recall, and in fact I don't believe so.

17 Q What position did Mr. Giffen hold with Satra?

18 A At the time, it varied, you know. At the time
19 I believe it was the president of Satra Consultant
20 Corporation.

21 Q Did you know that to be a subsidiary of Satra
22 Corporation?

23 A Yes.

24 Q Did you receive any discussion or advice or
25 comment from the Satra people to whom you had related the

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Stern-direct

2 conversation?

3 A Mr. Schloss merely remarked that Ambassador
4 Thompson had a very fine reputation. Mr. Giffen remarked
5 that he was too old and he was out of the trend of
6 current events.

7 Q Who was too old, Mr. Giffen or Mr. Thompson?

8 A He remarked that Ambassador Thompson was out of
9 the trend of current events between the U.S. and the
10 Soviets.

11 Q Did Mr. Giffen say what he meant?

12 A No.

13 Q Was there any other discussion?

14 A Not at the luncheon.

15 Q What happened next with respect to IBM or with
16 respect to any advice or instruction from Satra concerning
17 IBM?

18 A Sometime during the next couple of weeks, I
19 called a friend of mine, who had once worked at IBM.

20 Q Who is that?

21 A A Dr. Gene Fubini.

22 Q What was the purpose of your call?

23 A He had once been an officer of IBM. I told him
24 that I was thinking of calling Mr. Jones and what was Mr.
25 Jones like. Mr. Fubini wanted to know why I wanted to call

1 ammch 8

Stern-direct

2 him. I told him. Mr. Fubini then went on to tell me two
3 things: One, I should be aware that IBM had been approved
4 within the past couple of years by at least an Italian
5 trading firm in behalf of the Russians for IBM to do
6 business with the Russians and IBM had turned it down.
7 So it was an uphill battle. In spite of that, Mr. Jones
8 was a very businesslike, very forthright kind of a guy,
9 the kind of a guy I should speak to, I could and should
10 speak with in a factual and very direct way, and I shouldn't
11 worry about calling him.

12 Q What happened next?

13 A I inquired around the Satra offices for what
14 that Italian trading firm might be, who they might be,
15 and I then learned from Betty Van Stavern that it was
16 probably the Savaretti Brothers and she was well aware
17 of the previous attempts to get IBM to do business with
18 the Russians. It was during that discussion that
19 Mr. Oztemel came out and joined it.

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Satra

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Stern - direct

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1 Q What was said?

2 A They were aware that there had been this effort before
3 to get IBM to do business, and that IBM had refused.

4 Q Dr. Stern, at this conversation with Miss Van
5 Stavern and Mr. Oztemel or at the previous conversation
6 with Mr. Giffen and Mr. Schloss, did you say in words or sub-
7 stance that you could influence the decision of IBM?

8 A No, sir.

9 Q Did you say in words or substance that you had
10 any special powers with respect to IBM?

11 A No, sir.

12 Q Did you say in words or substance that you were
13 some kind of a key man in this deal, the proposed eal
14 or possible deal?

15 A No, sir. I only said that this is what Ambassador
16 Thompson had said, that's all.

17 Q Did you say in wordsl or substance to the Satra
18 people that Ambassador Thompson was a very long or
19 close friend of yours?

20 A No, sir.

21 Q Washe in fact a long and close friend of yours?

22 A No, sir.

23 Q Did you say in words or substance that Mr. Gilbert
24 Jones was a long and close friend of yours?

1 pm5mb2 Stern - direct

2 A. No, sir.

3 Q. Had you known Mr. Jones before?

4 A. No, I had not.

5 Q. Had you ever met him before this time?

6 A. No, I don't think so, but I'm kind of sure I haven't.

7 Q. Did you convey any impression consciously, inten-
8 tionally, to any of the Satra people that you knew Ambassador
9 Thompson or knew Mr. Jones?

10 A. No.

11 Q. Let's go on. Following this conversation with
12 Mr. Oztemel and Miss Van Stavern, what happened next with respect
13 to IBM or any advice or instructions you received from Satra?

14 A. About a week or so after I was at the Satra offices in
15 New York and --

16 Q. Will you fix an approximate time as best you can,
17 Dr. Stern?

18 A. It was either the middle of July -- it was either the
19 middle of July or the third week of July 1971.

20 Q. What happened?

21 A. I put in a call to Gilbert Jones of IBM.

22 Q. What position did you understand him to occupy
23 in IBM?

24 A. He was chairman of the Board of IBM World Trade.

25 Q. Is IBM World Trade a subsidiary of some sort
to IBM?

1 pm5mb3

Stern - direct

2 A It is their major subsidiary, I believe.

3 Q Having to do with international trade?

4 A Yes.

5 Q What happened in that conversation?

6 A I said that I was calling as a result of a suggestion by Ambassador Thompson. Mr. Jones said oh, yes, he was
7 aware -- he had heard from Ambassador Thompson; he knew
8 I was going to call, and as regards IBM considering doing
9 business with the Russians, he wanted me to know that Mr.
10 Tom Watson had written a letter to Mr. Gvishiani.11 Q Was Mr. Watson the chairman of the board of IBM
12 or some very important position?13 A Well, let me -- you see, until the end of June he
14 had been the chairman of the board of IBM itself, and now
15 he probably was something like the chairman of the executive
16 committee.17 Q So Mr. Jones, you said, told you that he wanted you
18 to know that Mr. Watson had written a letter to this Russian
19 gentleman?20 A To this Mr. Gvishiani, and they were awaiting
21 the reply, and until that they really couldn't discuss
22 anything; but when they would get such a reply, they would
23 be back in touch with me.

24 Q Was there anything more to this conversation?

1 pm5mb4 Stern - direct

2 A. No, that was it.

3 Q. Did you relay that conversation to anyone
4 at Satra?

5 A. Yes.

6 Q. To whom and when?

7 A. I came into the dining room later as a result
8 of the call.

9 Q. This is the Satra dining room?

10 A. That's right -- or, correction, before that I did
11 something else. I didn't know who Mr. Gvishiani was either,
12 so I asked -- I asked and I found one of the gals at Satra,
13 a Miss Ivanoff, who worked as an interpreter or something --

14 Q. Let's spell her name.

15 A. I-v-a-n-o-f-f. I asked her who is Gvishiani, "Have
16 you ever heard of him?" She said, "Oh, yes, Mr. Gvishiani
17 is Kosygin's son-in-law. He is also the deputy chairman
18 of the Soviet State Committee for science and technology,
19 and he is a very, very important man."

20 Q. You were up to the point where you went to the
21 Satra dining room.

22 A. So knowing the characters, I then finally went into
23 the dining room, and immediately upon sitting down I announced
24 that I had spoken to Mr. Jones, chairman of the Board of
25

1 pm5mb5

Stern - direct

2 IBM World Trade, and Mr. Jones said that Mr. Watson had
3 written a letter to Mr. Gvishiani, and when they get an
4 answer, he will be back in touch with us.

5 Q. Who was present in the Satra room then?

6 A. Mr. Oztemel, Mr. Giffen, Miss Van Stavern. There
7 were others, but I remember a Mr. Sandy Young. I happened
8 to be sitting next to him.

9 Q. Did anyone say anything when you made this
10 statement?

11 A. Yes, each of Mr. Giffen and Mr. Oztemel each started
12 to laugh. Each one announced that he had interviewed an
13 IBM vice president, these being two different IBM vice
14 presidents.

15 Q. Two separate individuals?

16 A. Mr. Giffen had interviewed one, Mr. Oztemel had
17 interviewed another; and they had each been assured that IBM
18 would never do business with the Russians, and this was com-
19 plete foolishness, and they laughed.

20 Q. Referring to what was complete foolishness?

21 A. My report and the implication therein that IBM
22 was possibly considering this.

23 Q. Did you say anything?

24 A. I closed the subject off by saying, "But I have
25 just hung up the phone after having spoken with the chairman

1 pm5mb6

Stern - direct

2 of the board."

3 Q. Did anyone say anything more?

4 A. No.

5 Q. Did you say to anyone present at this Satra meeting,
6 Dr. Stern, that you could influence IBM's decision in some
7 way?

8 A. No.

9 Q. That you had some special powers of persuasion with
10 respect to that decision?

11 A. No.

12 Q. That you somehow could insinuate Satra into
13 the position?

14 A. No.

15 Q. What happened next?

16 A. I was in California --

17 THE COURT: How much later would this be, Doctor?

18 THE WITNESS: This was -- one second -- the morn-
19 ing of Friday, August 6th.

20 Q. 1971?

21 A. 1971. And at about 8 a.m. California time, which
22 is 11 a.m. here, I received a telephone call from a Mr.
23 Ralph Stafford who identified himself as the director of
24 east-wedst relations for IBM, and he wanted to speak with
25 me about IBM's possibly getting involved in -- I think he

1 5pbmb7 STERN - direct

2 said just -- I think he said in the Kama River Project.

3 THE COURT: I am sorry, I didn't get that. You think
4 he said what?

5 THE WITNESS: I think he said getting involved in
6 the Kama River Project.

7 THE COURT: Right.

8 THE WITNESS: And might we set up a meeting to
9 get together to discuss this.

10 Q. Did you say anything?

11 A. I initially said, "YOU know I have spoken to Mr.
12 Jones?" And he said well, he was phoning me upon the
13 request of Mr. Jones.

14 Then I went on, I said, "Well, is it you want to speak
15 about IBM possibly getting involved inthe Kama River Project
16 alone, or would you be willing to discuss IBM doing business
17 with the Russians across the boards? And would you also be
18 willing to discuss the possibility of IBM introducing
19 an intermediary?"

20 Q. What did Mr. Stafford say?

21 A. He respondedn, he said those three subject s would
22 be the issues we would discuss in a meeting.

23 Q. Was anything more said that you recall?

24 A. I then said, "Well, sure, why don't I see what I

25

1 pm5mb8

2 could set up and I will call you back."

3 Q. What did you do next?

4 A. I then phoned the Satra office in New York. I
5 spoke to Bette Van Stavern. I told her about the call I
6 had received from Mr. Stafford, suggested that this was
7 well worth having a meeting on, that I should come East
8 for it, and further suggested she not only confirm that
9 with Mr. Oztemel but ask Mr. Oztemel if he wouldn't want
10 to attend this meeting also.11 She did ask him, she did respond that yes, not only should
12 I come, but Mr. Oztemel would be happy to attend such a
13 meeting, whereupon I said, "Well, good. Since you are
14 in New York, Mr. Stafford was in New York," I said, "Why
15 don't you phone him and set it up."

16 Q. Was such a meeting set up?

17 A. Yes, it was.

18 Q. For what date?

19 A. August 10th.

20 Q. Was that meeting held on August 10th?

21 A. Yes.

22 Q. Where was it held?

23 A. It was held in Mr. Oztemel's office at Satra.

24 Q. Who was present?

25 A. Well, Mr. Oztemel came about fifteen minutes late

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1 pm5mb9

Stern - direct

2 his meeting, sofor the first ten or fifteen minutes, it was
3 just Mr. Stafford and myself, but then we were joined by
4 Mr. Oztemel.

5 Q. What was discussed?

6 A. Well, during the initial ten or fifteen minutes,
7 we made a lot of small talk within which we sought to
8 identify if we knew any people in common, and we did.

9 Q. What points of substance were discussed, Dr. Stern?

10 A. Mr. Stafford identified the fact that he had spent
11 the last six years running an IBM office in Vienna. He had
12 the responsibility for developing and managing the trade
13 that IBM was doing, the sales of IBM equipment to the rest
14 of what is known as the socialist countries, namely, the
15 Soviet bloc exclusive of the Sovient Union itself. He had
16 developed thatoverthe last six years.

17 Q. What was discussed among you, Mr. Stafford, and
18 Mr. Oztemel?

19 A. We reviewed that Mr. Stafford was discussing the
20 possibility of IBM getting involved in the Kama River
21 Project, the fact that they would be willing to discuss
22 doing business with the Soviet Union at large, and the fact
23 that he, Mr. Stafford, in particular was anxious that if IBM
24 were to go in there, that they should introduce an inter-
25 mediary because his experience of the last six years had been

1 pm5mb10 Stern - direct

2 that it was rather difficult and kind of tedious to
3 develop this kind of relationship with one of the bloc
4 countries, beside which his health wasn't too good, and he
5 didn't want to go through it again.

6 Q Did he say this to you and to Mr. Oztemel?

7 A He definitely said it to me when we were along. I
8 do not recall if he mentioned his health while Mr. Oztemel
9 was there or not.

10 Specifically, on his health, he said he had had two heart
11 attacks, he had an ulcer, and I don't know what else, but
12 I mean, there was specific discussion on his health.

13 Q I want to ask you about the conversations that were
14 held in the presence of the three of you.

15 A Yes.

16 Q Mr. Oztemel, you, and Mr. Stafford.

17 A Everything I have said except I am not sure if
18 the health issue was raised while Mr. Oztemel was in the
19 room or not. That I really don't recall accurately.

20 Q What in substance did Mr. Oztemel say?

21 A Ho, Mr. Oztemel discussed the complexities of
22 doing business with the Soviets, and how difficult it is to
23 get started, how long it might take, and things like that.

24 Q- Did he discuss any contributions that the
25 Satra organization could make?

2 A. Yes, it's interesting, his response to that. Mr.
3 Stafford announced that, you know, he had seen a picture
4 of Mr. Oztemel in a German magazine, Der Spiegel.

5 Q. And concerning what Mr. Oztemel said about Mr. Stafford's
6 organization and what he could do, do you remember what he
7 said?

8 A. Well, it was the initial meeting, and it was a
9 very light allusion to experience, knowing the people involved,
10 understanding how to negotiate, and trade.

11 Q. Anything further that was discussed at this meeting
12 that you recall?

13 A. Nothing specific other than the way the meeting
14 ended up.

15 Q. How did the meeting end up?

16 A. The meeting ended up the following: Mr. Stafford
17 said that IBM was going through the throes of their decision
18 making. He, Mr. Stafford, would be most anxious to convince
19 them to use an intermediary if they were going to go into
20 the Soviet Union.

21 He, Mr. Stafford, was going back to Vienna, and he was
22 going to also interview an Italian trading firm, and we would
23 get together and speak again upon his return to the
24 United States.

25 Q. Did Mr. Oztemel say anything when Mr. Stafford

1 pm mbl2 Stern - direct

2 said he was also interested to review the capabilities
3 of this Italia- trading company?

4 A. No.

5 Q. Did he mention the name?

6 A. OH, sorry, I believe by that time there had been
7 a very laudatory article in Business Week magazine abou
8 Satra. I believe Mr. Oztemel got a copy of that to give
9 Mr. Stafford.

10 Q. Was that done at the meeting?

11 THE COURT: What was your question?

12 Q. Was that done at the meeting? Did Mr. Oztemel give
13 Mr. Stafford a copy of this article?

14 A. Yes, yes.

15 Q. How was the meeting left?

16 A. Mr. Oztemel was going to Moscow on other matters.
17 Mr. Stafford was going to Vienna. We would get together
18 after Mr. Stafford returned.

19 Q. This meeting, you say, took place on August 10th?

20 A. That's right.

21 Q. I show you Exhibit A which you identified as the
22 first form of memorandum or agreement between you and Satra
23 in your testimony this morning. In point of time, would
24 you relate what came first, this document or this discussion
25 that led to this document or the meeting among you, Mr.

190 A

1 pm5mb13 Stern - direct

2 Oztemel, and Mr. Stafford?

3 A. The meeting with Mr. Stafford was during the day of
4 August 10th. The discussion that resulted in the understand-
5 ing as represented by Exhibit A was had at the dinner the
6 evening of the 10th, so it was after the intial meeting
7 with Mr. Stafford.

8 Q. So then you had conversations with Mr. Oztemel after
9 Mr. Stafford left or did you have such conversation?

10 A. Just general, or specifically -- I am sorry,
11 I don't know what you mean by conversation.

12 Q. Let me put the question: Did you have a conversation
13 with Mr. Oztemel that formed the basis for your memorandum
14 agreement, Exhibit A?

15 A. The conversations that formed the understanding that
16 is represented in Exhibit A were general. WE only alluded to
17 IBM as one of a possible -- we had only this one
18 introductory discussion with IBM and it was not the burden
19 of Exhibit A --

20 MR. HILL: If your Honor please, I am going to
21 mvoe to strike that answer on the basis of it not being re-
22 sponsive to counsel's own question.

23 THE COURT: Overruled.

24 Q. Dr. Stern, in this discussion that you had that
25 formed the basis for Exhibit A, this discussion between you,

1 pm5mb14

Stern - direct

2 Mr. Oztemel, Miss Van Stavern, did you say in words or
3 substance that you had some special influence with IBM?

4 A. No, IBM was hardly discussed at that dinner. You
5 know, in fact, that was nothte burden here at all, I mean.

6 Q. Just to be clear, I don't want to limit myself to
7 this dinner.

8 A. I'm sorry.

9 Q. At any time up to this dinner --

10 A. No.

11 Q. -- did you tell Mr. Oztemel and Miss Van Stavern
12 in words or substance thatyou would be able to bring around
13 IBM to do a deal with Satra?

14 A. No.

15 Q. Or that you were in some way indispensable to
16 this deal?

17 A. No.

18 Q. Or that if you weren't there, the deal couldn't
19 be made?

20 A. No.,

21 Q. What happened afterwards in relation to IBM or
22 in relation to Satra' advice or instructions with respect
23 to IBM?

24 A. Well, we hardly discussed the Stafford meeting.
25 Subsequently, the next thing that happened was I was again

1 pm5mb15

2 Stern - direct
3

192 A

in California, and some time the middle of the week of
August 16th, if I look at my telephone bills I can tell
you when, but was in the middle of the week, I think it was
something like August 18th, I received a call from Bette
Van Stavern.

Q. You were in California.

A. Yes, I was in California; she was in New York.

Q. What did she say?

A. She had just heard from Mr. Oztemel, who was in
Moscow, and he told her to get in touch with me, that it was most
urgent for me to set up a meeting with IBM, the meeting to
beheld immediately upon his return from Moscow.

Q. What did you say?

A. I said, "What's the urgency? What's the meeting
for? Mr. Stafford is the only one we have spoken with from
IBM. HE's in Vienna. Why don't we wait for him to come
home?"

She was in touch with Mr. Oztemel, and got back to
me, "No, we cannot wait for Mr. Stafford, we must have it."

I said I hate going around Mr. Stafford. Why doesn't Mr.
Oztemel, who is over in Europe, why doesn't he see Mr.
Stafford directly in Vienna?

No, he didn't have the time.

So as a result, I agreed I would make an effort to set up
a meeting.

1 pm5mb16 Stern - direct

2 Q Did Miss Van Stavern say in what country of Europe
3 Mr. Oztemel was at that time?

4 A He was in Moscow. Maybe -- let me -- he had been there.
5 I think he was still there but, you know -- no, he was in
6 Moscow. That's right, yes, I am sorry. I want to make
7 sure, that's all.

8 Q Following that conversation with Miss Van Stavern and
9 you, what happened next?

10 A I phoned IBM, asked for Mr. Stafford's office. I
11 became connected by phone with a Mr. Bert Witham who identified
12 himself as the vice present of finance.

13 He identified further that the reason I was speaking
14 with him was that Mr. Stafford worked for him.

15 Q See if we can move ahead a little bit. AS a result
16 o those conversations, was a meeting scheduled?

17 A Yes, there was.

18 Q When was the meeting scheduled for?

19 A For August 24th.

20 Q Who was at;that meeting?

21 A Mr. Oztemel, myself, as it turned out Mr. Witham
22 got called away at the last moment, and he was represented
23 by mr. Farr, who is the ledgalcounsel for IBM.

24 Q At this meeting of August 24th among you,
25 Oztemel, and Farr, what was discussed?

A Mr. Oztemel said that while in Moscow he learned

1 pm5mb17 Stern - direct
2 that IBM was going to exhibit some of their equipment
3 in a exposition to be held in Leningrad in October. He
4 wanted IBM to know aht on the one hand the Russians were
5 angry with IBM, that they had refused to do business with
IBM before.

6 On the other hand, they were very happy that IBM was
7 participating in this exhibit. There was some --

8 Q "They" being the Russians?

9 A The Russians. There was some confusion abou their
10 participation, and Mr. Oztemel offered his services to help
11 IBM in the exhibit in Leningrad, and the last item, a
12 Mr. Alkhimov, a Soviet vice minister for foreign trade, was
13 going to come over and he, Mr. Oztemel,would be happy to
14 get them together with IBM.

15 THE COURT: This is all what Mr. Oztemel told you,
16 the people at lthe meeting?

17 THE WITNESS: AT the meeting.

18 Q Was anything said by Mr. Farr or by you?

19 A Well, Mr. Farr was not in this particular issue. He
20 was there merely to attend; he would appreciate it if Mr.
21 Oztemel would write a letter or memo, the substance of what
22 he said.

23 Oh, then I guess we tried to feel Mr. Farr out on the
24 decision-making in IBM and Mr. Farr said that there had been
25 no decision on doing business with the Russians, there were

2 opposing camps within IBM and he was watching the situation.

3 Q. What happened next?

4 A. We adjourned; the memo was written and sent.

5 Q. Mr. Oztemel sent a memo?

6 A. Yes.. Before adjourning, however, it was agreed
7 we would meet with Mr. Witham at his earliest convenience.

8 Q. In earlier testimony, you have identified that
9 date, August 24th, as the time of the second proposal that
10 was made by Satra to you. Would you place it in time, the
11 discussion that led to this second proposal to this meeting
12 of August 24th, among you, Farr, and Oztemel?

13 A. We had the meeting with IBM August 24th at 11 a.m.

14 It was walking back from IBM's office to Satra's office that
15 I raised the issue of finalizing in a document the agreement
16 I thought we had reached, of this Exhibit A.

17 Q. You have testified earlier today about all the
18 discussions that led to the formation of Exhibit B, which
19 was earlier sent to the jury, which was the memorandum of
20 agreement between Dr. Marvin Stern and Satra Corporation -- I
21 read from it -- August 25, 1971.

22 In the course of all those discussions, did you say in
23 words or substance to anybody in the Satra organization
24 that you were able to influence the decision of IBM?

25 A. No.

Q. Did you say in words or substance that you could
be doing something that was important to get Satra into

1 pm5mb19

Stern - direct

2 the picture?

3 A. No.

4 Q. Did you say that you could deliver IBM to Satra?

5 A. No.

6 Q. Or anything like that?

7 A. No.

8 Q. Did you say that if you weren't there, the entire
9 arrangement might not ever go forward, it would collapse?

10 A. No.

11 Q. Or anything like that?

12 A. No.

13 THE COURT: Mr. Hellerstein, I think this would
14 probably be a good time for us to break for the day.

15 MR. HELLERSTEIN: I am ready, your Honor.

16 THE COURT: Ladies and gentlemen, we will be using
17 this courtroom for the rest of the week, and I think the
18 trial will take the rest of the week, and I am bound and
19 determined also to see if I can't end it by the end of the
20 week. I ask you to be back here ready to go at 10 o'clock
21 tomorrow morning, and if you come from any distance, please
22 allow a little more time than you might otherwise, because of
23 the transportation difficulties that somebody always has.24 We can't start the case until we are all here, so I would
25 appreciate your doing that. Please don't discuss the case

1 eld

2 MARVIN STERN

3 || v.

72 Civ. 143

4 SATRA CORP. and
SATRA CONSULTANT

April 2, 1974
10:05 a.m.

8 APPEARANCES:

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By: ALVIN K. HELLERSTEIN, Esq.
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16 In the courtroom; in the presence of the jury.)

17 THE COURT: Good morning, everyone.

18 MARVIN STERN, resumed.

19 DIRECT EXAMINATION (Continued)

20 BY MR. HELLERSTEIN:

21 Q Doctor, we left off yesterday, with a discussion
22 of the August 24, 1971 meeting where you were present with
23 Mr. Oztemel and Mr. Farr, who you identified as a lawyer of
24 the staff of IBM. and I believe that you told the jury about

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2 a discussion concerning the possible decision by IBM to sell
3 in Leningrad, and you talked about what Mr. Farr said, that
4 the decision that IBM was up in the air and there were two
5 camps. Do you recall the conversation?

6 A Yes. However, there was no response by Mr. Farr
7 relative to IBM going to participate in the Leningrad Fair.
8 He was unfamiliar with that. There was response from Mr. Farr
9 about the general possibility of IBM doing business with the
10 Russians.

11 Q So it is as to the general possibility that he
12 said there were two camps and there was no knowledge at all
13 concerning Leningrad as far as Mr. Farr was concerned?

14 A That is correct.

15 Q When you left the meeting did you leave with
16 Mr. Oztemel?

17 A Yes.

18 Q Did you and he have a discussion?

19 A Yes.

20 Q Please tell the jury what was discussed.

21 A Generally, Mr. Oztemel was disappointed at the
22 fact that he had come over for a meeting with the Vice
23 President of Finance at IBM, a man to whom Mr. Stafford had
24 reported, and one with whom he had hoped to have substantive
25 discussion.

2 Q Was that Mr. Witham to whom he was referring?

3 A That's right.

4 Q He said he was disappointed. Did he express his
5 disappointment?

6 A Yes. He was disappointed, he had come over here
7 for a substantive discussion about IBM's participation in
8 doing business with the Russians, and he had been met by a
9 lawyer, and there was no discussion. He was going to have to
10 merely send them a letter to cover the items he would have
11 hoped to have been able to discuss directly with a responsible
12 official at IBM.

13 Q Did you say anything?

14 A I said words to the effect that these things
15 happen, we need not be discouraged.

16 Q He said, look, we are never going to do business
17 with IBM.

18 Q Was there any more to the conversation, Doctor
19 Stern?

20 A Not as regard to IBM.

21 Q We have covered the discussions you have had in
22 terms of possible agreement that you were then looking forward
23 to between yourself and Satra.

24 Q I'd like to deal with IBM in this series of
25 questions and answers. What happened next with respect to

2 IBM?

3 A We then did get to see Mr. Witham.

4 Q How was that arranged?

5 A Through actual discussions between myself and
6 Mr. Hendricks of IBM.

7 Q That may be a new name. Is that H-e-n-d-r-i-c-k-s?

8 A Yes.

9 Q What position did he occupy in IBM?

10 A He was on the staff, the easiest way I could
11 describe it, he was the in-house correspondent with
12 Mr. Stafford who had been working out in the field.

13 Q How did you happen to get to Mr. Hendricks?

14 A Mr. Witham had originally mentioned
15 Mr. Hendricks, his name, when I phoned him to set up the
16 original meeting, and I had spoken before with Mr. Hendricks
17 by phone. And this was the natural man to speak with in the
18 absence of Mr. Stafford.19 Also, I had phoned Mr. Stafford in Vienna to make
20 sure he did not feel we were going around him and we were
21 speaking with others at IBM. Mr. Stafford advised that his
22 liaison man at IBM was Mr. Hendricks.

23 Q And so was a meeting arranged?

24 A Yes.

fol 25 (Continued on page 142.)

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Stern-direct

2 Q Was a meeting held?

3 A Yes.

4 Q When was that meeting held?

5 A It was held at 4:00 in the afternoon of August
6 the 31st.

7 Q Where was it held?

8 A At IBM headquarters.

9 Q Who attended?

10 A There was Mr. Oztemel and myself; there was Mr.
11 Witham and Mr. Hendricks.

12 THE COURT: Was this IBM headquarters in New York
13 City?

14 THE WITNESS: Yes.

15 Q What was discussed at the meeting, Dr. Stern?

16 A Apart from the initial introductions?

17 Q Let's go to the substance of the matter and lead
18 up to the discussions.

19 A Mr. Witham was in receipt of a memorandum from
20 Mr. Oztemel. The memorandum was of August 25th, which was
21 in response to Mr. Farr having asked Mr. Oztemel to submit
22 such a memorandum.

23 Q Tell us about the discussions that were held, Dr.
24 Stern.

25 A The memorandum offered the help of the Satra

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Stern-direct

2 organization for the Leningrad Fair. And in essence, Mr.
3 Witham said, "We thank you for your kind offer of help,
4 but no, thanks. All our arrangements are in order."
5 This took care of that subject.

6 THE COURT: You mean all the arrangements for the
7 fair were in order?

8 THE WITNESS: Yes, sir.

9 Q Go on, Doctor.

10 A Mr. Oztemel then mentioned the impending visit
11 of a Soviet vice-minister, Akhimov, and suggested it might
12 be helpful to IBM if while Mr. Akhimov were to be here in
13 the U.S., if he would be able to meet IBM. Mr. Witham
14 said he would discuss that matter with Mr. Jones. The
15 only other item that was mentioned was that Mr. Stafford
16 was due to return imminently, and we might have another
17 meeting after he returned.

18 Q Dr. Stern, you made reference to a memorandum
19 or a letter from Mr. Oztemel to Mr. Farr on August 25, 1971.
20 I show you Plaintiff's Exhibit HH for identification. I
21 ask you if you can identify that document.

22 A Yes. It is the memo I spoke of.

23 Q Did you leave the meeting with Mr. Oztemel?

24 A Yes.

25 Q Did you have a discussion?

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Stern-direct

2 A Yes, we did.

3 Q What was the discussion concerning IBM?

4 A Again, Mr. Oztemel was rather disappointed at
5 the meeting --

6 Q Did he so express himself?

7 A In this instance he was disappointed because we
8 had offered or he had offered specific help for a specific
9 activity, namely, the Leningrad Exposition, and his offer
10 was based upon his argument that the Russians felt that
11 the arrangements for the IBM participation were not all
12 in order and he, Mr. Oztemel, would be able to help him
13 out, and that they turned him down.

14 In addition to that, he said --

15 Q Before you go on, Dr. Stern, you said that he was
16 disappointed and gave that reason. Did he so express
17 himself?

18 A Yes, sir.

19 In addition, he went on to say he doubts that
20 other than perhaps a dipping of the toe in the water by
21 IBM showing some wares in the Leningrad Exposition, he
22 doubts whether IBM would really go all out in business
23 with the Russians. The rationale he offered for that was
24 the following: He said here is IBM at the time, an \$8 billion
25 a year firm, doing business half in the United States and

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2 half elsewhere. If they actually decide to really do
3 business with the Russians, they would expose themselves
4 to a great deal of hostility. In particular, he said,
5 the JDL, the Jewish Defense League, would go marching up and
6 down with banners against IBM; the Americans for Freedom
7 would go marching up and down with banners against IBM, and
8 IBM would be much more worried about its image and the
9 effect on its other sales. So he could not see IBM really
10 getting serious about this, and that is perhaps why they
11 had rejected his help.

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Stern-direct

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2 Q And he so expressed himself to you?

3 A Yes, sir.

4 Q Did you say anything to him?

5 A I said a couple of things. I said I, myself,
6 tended to disregard the actions of lunatic fringe
7 organizations. I said I don't know what IBM is going to do.
8 However, it is beginning to look as if the U.S. is going
9 to open up trade. The fact that IBM has been speaking
10 with us at all means they may be considering the possibility
11 of going in and the possibility of using an intermediary.12 No matter how small these possibilities are, if
13 IBM were to go in and if they were to use us, the potential
14 might be very hot.

15 That was my discussion.

16 Q Was there any more to the conversation?

17 A No. That was it.

18 Q This was August 31st?

19 A Yes. We were walking from IBM back to the offices.

20 Q You have previously testified yesterday that
21 on this date of August 31st, there was a discussion in the
22 Satra offices which led up to the preparation of a proposal
23 for a contract by Mr. Mott which Mr. Oztemel signed, writing
24 something on the third page, and gave it to you.

25 Would you tell the jury where in time one fitted

2 in with the other?

3 A Once we closed out our discussion of IBM and
4 its possibility or not possibility of doing business with
5 the Russians and/or engaging Satra, I then opened the
6 issue of the agreement that we had confirmed by phone the
7 week end before.

8 THE COURT: I am not quite clear about that,
9 Dr. Stern. You mean after you finished talking on
10 August 25th about whether or not --

11 THE WITNESS: I may have the dates wrong.

12 A Are you talking now about August 31st?

13 Q We are talking about 31.

14 A Yes.

15 THE COURT: August 25th was the date of the
16 memo?

17 THE WITNESS: That's right.

18 THE COURT: And the meeting, the last meeting that
19 you have described took place on August 31st?

20 MR. HELLERSTEIN: There was a meeting on the
21 24th, according to Dr. Stern's testimony, and then there
22 was a memorandum to IBM and then a subsequent meeting on
23 the 31st which Dr. Stern testified to a few minutes ago,
24 and now he went with Mr. Oztemel.

25 A (Continuing) What was still laying on the table,

2 so to speak, as of August 31st, was the finalization
3 or the signing of the offer he had made to me August
4 the 25th, whereby I would get \$7,500 a month and my
5 acceptance of that and discussion with him over the week
6 end of the 28th and the 29th. And then we went to this
7 meeting with IBM on August 31st, and coming back from
8 the meeting, once we were done discussing the meeting, I
9 said, "All right, not let's get back to the issue of
10 our relationship."

11 THE COURT: Where did that discussion take place,
12 in the street or in the office?

13 THE WITNESS: On the street while we were walking
14 back to the Satra offices.

15 Q Dr. Stern, in the course of your conversations
16 with Mr. Oztemel, and others at Satra, up to the
17 time we have covered in your testimony, up through August 31st
18 and the signing of that document by Mr. Oztemel in the form
19 of two proposals to you, have you ever said, in words or
20 substance, that you controlled IBM's decision?

21 A No.

22 Q Have you said, in words or substance, that you
23 controlled whether or not IBM would do business with the
24 Russians?

25 A No.

2 Q Have you said, in words or substance, that you
3 controlled the decision whether IBM would use an inter-
4 mediary such as Satra Corporation?

5 A No.

6 Q I show you Exhibit D, which is the Satra proposal,
7 two proposals and your acceptance of the first proposal.

8 Let me ask you, Dr. Stern, what did you under-
9 stand your obligations to be under that agreement?

10 MR. HILL: I object to that, your Honor. I
11 don't know that his understanding is relevant.

12 THE COURT: The jury has to construe what the
13 intentions of the parties are. Let's discuss it.

14 (At the side bar.)

15 MR. HELLERSTEIN: If your Honor please, if Mr.
16 Hill's objection is that the document speaks for itself
17 and nothing outside the document is to be admissible in
18 construing it, especially as to Dr. Stern's obligations,
19 I will accept that.

20 If his contention is that matters outside the
21 document can be introduced to explain it, I would like to
22 go into it.

23 It is Mr. Hill who has to make his choice as to
24 the theory.

25 MR. HILL: The burden isn't on me, your Honor.

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I'm not bound by this objection --

3 THE COURT: What do you intend to bring out at
4 this time?

5 MR. HELLERSTEIN: That he understood he would
6 bring IBM into a contract, to do his best to make
7 nice profits if such a contract developed, and generally --

8 THE COURT: In the context of this case as to the
9 allegation of misrepresentation and the probability that
10 material outside the contract will be brought in on
11 the defense case, I will allow the question.

12 (In open court.)

13 (Question read.)

14 A I'm answering now only with regard to Alternative
15 No. 1, which is the one I accepted.

Q What did you understand?

17 A With regard to that, I received no salary, no
18 personal financing, anything like that. I am a partner,
19 I share equally in the revenues. What that meant to me
20 was, I was to see that there be revenues as much as possible
21 and I would profit thereby. I mean, that's No. 1, as compared
22 if I had a salary, I may not have that much of a concern
23 then.

24 Q You understood that whatever could be done --

25 A Yes, that's the only way I was going to get any

210 A

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2 money.

3 THE COURT: Will you first tell us what you under-
4 stood what your obligations were to be?

5 THE WITNESS: My obligations were, number one,
6 to bring about an agreement between IBM and Satra. This
7 obligation seemed to exert considerable effort on Satra to
8 continue activities in this regard.

9 Releative to the Mack Truck situation, they had
10 held lavish parties, they had suites at the Waldorf --

11 THE COURT: That is not considered as an answer.
12 Dr. Stern, what were you supposed to do?

13 THE WITNESS: I was supposed to help to bring
14 about an agreement between IBM and Satra.

15 THE COURT: Would it be fair to use the expression
16 as sometimes is used elsewhere, that you were to use your
17 best efforts?

18 THE WITNESS: Yes, sir.

19 Q What, if anything else, were you supposed to do,
20 as you understood it?

21 A In addition to bringing out the agreement between
22 the parties, I was to continue to work with IBM in
23 explaining and offering the kind of services that Satra was
24 capable of, and Iwas to work with Satra in helping identify
25 opportunities where IBM might be useful with the Soviets.

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2 It was toward that end that Mr. Oztemel suggested
3 he would also like to introduce me to the Moscow scene.

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2 Q Was there anything else said by discussion or
3 understanding, that there was something you were supposed to
4 do under that agreement?

5 A Nothing specific.

6 Q Let's go back to the discussions about IBM.
7 We've gone as far as August 31. Anything after that?

8 A Yes. Mr. Stafford returned from Europe and I
9 scheduled a meeting which was held December 3rd.

10 Q With whom was that held and where?

11 A The Satra offices. From IBM there were
12 Mr. Stafford and Mr. Hendricks. From our side, Mr. Oztemel
13 and myself and Mr. Oztemel introduced Mr. Giffen to the
14 scene for the first time.

15 Q What position did Mr. Giffen hold?

16 A He, at the time, I think, was the president of
17 Satra Consulting Corporation, but somewhere in there, I don't
18 know exactly when, he became vice president of Satra.

19 Q You tell us this was on December 3?

20 A That's right.

21 Q Tell us what was discussed.

22 A The IBM personnel began to inquire as to specific
23 services that Satra might be able to perform, if IBM decided
24 to go into the Soviet market, and if they would engage an
25 intermediary such as Satra. The reason I keep using the

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2 word if, Mr. Hendricks in particular raised things like you
3 must understand if the Russians march into Rumania, IBM
4 won't go near the Soviet market and things like that. So,
5 we were still a contingency. In the discussion of the
6 possible services, Mr. Hendricks, whom I have identified as
7 the inside staff man, as compared to Mr. Stafford, would have
8 been out in the field, within the Soviet bloc. Mr. Hendricks
9 asked about the difficulties in getting visas and hotel
10 accommodations, travel and things like that.

11 Q What other points were discussed at the meeting?

12 A Mr. Stafford and I began to turn discussion more
13 towards what I will call professional services instead of
14 administrative services.

15 Q What was said?

16 A Mr. Stafford spoke about their need for high
17 level introductions, their need for assistance in financing
18 of the deals in those inferences where the Russians would be
19 unable to pay in western currency and in addition to financing,
20 the possibility of barter. I spoke about getting better
21 guidance as to the actual needs by the Soviets for this kind
22 of equipment, and getting but a feel and evaluation of the
23 technical level capability within the Soviets, so that they
24 can absorb the kind of equipment IBM made and would be
25 willing to offer them. That is my recollection of the essence

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2 of the meeting.

3 Q What happened next?

4 A We adjourned for lunch at the Satra dining room
5 and continued a more informal discussion there. I had been
6 delegated by Mr. Oztemel to represent the Satra side.

7 Q When did that happen, Doctor Stern?

8 A That actually happened in the office before we
9 went to lunch.10 Q Before you had the meeting with the IBM people or
11 afterwards?

12 A No, it was during the meeting.

13 Q During the meeting?

14 A Yes.

15 Q What did Mr. Oztemel say?

16 A Mr. Oztemel said that Doctor Stern will continue
17 those discussions about services and what they are liable to
18 cost, he will represent our side on those discussions and it
19 was announced that Mr. Stafford would represent the IBM side.20 Q With respect to Mr. Oztemel's statement, to whom
21 did he say that?22 A To both Mr. Stafford and Mr. Hendricks, in the
23 presence of Mr. Giffen and myself.24 Q You said that you then had lunch. What happened
25 after that? What was the next point in time that something

2 happened with respect to IBM?

3 A There was one other thing that happened at the
4 meeting, I'm sorry.

5 THE COURT: Before lunch?

6 THE WITNESS: Yes, before lunch.

7 A (Continuing) Mr. Hendricks presented a letter
8 that Mr. Jones had signed, to a Mr. Akhimov of the Soviet
9 Union, inviting him to speak with IBM while he is here, since
10 Mr. Jones said he understood Mr. Akhimov was going to come
11 here, and the letter was given to Mr. Akhimov for transmittal.

12 THE COURT: The original letter?

13 THE WITNESS: Yes.

14 Q In other words, Mr. Oztemel was to bring the
15 letter from Mr. Jones to Mr. Akhimov?

16 A That's right.

17 Q When was the next time that something happened
18 with respect to the IBM relationship?

19 A From September 30, there was a flurry of discus-
20 sions between Mr. Stafford and myself.

21 Q Person to person or on the telephone?

22 A Both.

23 Q What eventuated out of the flurry of discussions?

24 A The next highlight of the discussions was, we had
25 a lengthy luncheon meeting September 8, wherein we reached

1 5hpd Stern-direct 156

2 certain tentative agreements.

3 Q Who is we, Doctor Stern?

4 A Mr. Stafford and myself.

5 Q And would you tell the Court and jury the sub-
6 stance of those agreements that you reached?

7 A Yes. I suggested to Mr. Stafford that rather
8 than IBM consider buying a pig in the poke, we might consider
9 a honeymoon or a trial relationship for 90 days, to see if
10 IBM could then become satisfied that in fact Satra would
11 offer services which would be most helpful to IBM.

12 Q I take it a honeymoon would be better than a pig
13 in the poke?

14 A Yes. Towards that end I offered a particular
15 narrative. I said we would agree beforehand on a particular
16 long-term agreement between IBM and Satra. However, this
17 agreement is contingent upon the successful completion of
18 certain events during the 90 days, the events being the
19 following. One, Mr. Akhimov indicate to Mr. Jones that
20 although the Soviet Union is angry at IBM for having snubbed
21 them before, that the Soviet Union was now willing and happy
22 to do business with IBM. Number two, the volume of business
23 that the Soviets would expect to do with IBM, would be sifni-
24 ficant enough to make it worth IBM's while, and number three,
25 Mr. Akhimov would give blessings to a relationship between

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2 IBM and Satra.

3 My offer was if we don't accomplish this in 90

4 ys, you're off the hook.

5 (Continued on page 157.)

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2 Q To whom did you express this?

3 A Mr. Stafford.

4 Q This was at this lunch?

5 A Yes.

6 Q And I think you aid September --

7 A September the 8th here in New York.

8 Q What did Mr. Stafford say to you?

9 A He thought that would be a good technique, it
10 would be a showing of good faith in the IBM hierarchy, and
11 he thought that that could very well be a saleable way of
12 actively exploring a final relationship with Satra.

13 We then went on to discuss the guts of what such
14 a final relationship with Satra would be.

15 Q This is still at the lunch?

16 A Oh, yes.

17 Q What did you say about that?

18 A I said we would expect some kind of retainer.
19 He said well, that may be awkward for IBM, they are used to
20 giving commissions, but maybe or maybe not on retainer. I
21 backed off. I said all right, we would like a showing of
22 good faith on the part of IBM; we would like to see at least
23 a nominal retainer, and if that could not be sold, you could
24 make that advance against commissions. But we would want
25 some current early income.

2 Then, as regards to commissions we did a
3 negotiation relative to that.

4 Q Tell the jury what you said.

5 A Actually, a very simple negotiation. I asked for
6 five percent on net sales, he offered three, and we shook
7 hands on four.

8 Q Anything else discussed?

9 A When I say we shook hands on four, he said he
10 thinks that is reasonable, he now would be going back to IBM
11 to discuss this with his superiors, and to try to sell it.

12 Q Was there anything more discussed at this meeting
13 that you recall?

14 A We hoped to go to Moscow together if we were to
15 finalize an agreement.

16 Q Following this lunch on the 8th of September, 1971,
17 did you relay the substance of what was discussed to anyone
18 at Satra?

19 A Yes, sir. Immediately I got back into the Satra
20 offices, I went directly to Mr. Oztemel. Mr. Giffen saw me
21 coming in and he ran in. So he was in that meeting also. I
22 told Mr. Oztemel what he had offered and what at least was
23 acceptable to Mr. Stafford, although he had to sell it up
24 the line, namely, some kind of nominal retainer which may have
25 to be an advance against commission -- I'm sorry.

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Before that, I spoke about my offering the honey-moon, the trial period, which if successful we would then have at least a nominal retainer or an advance against commission; we would have a commission of four percent on net sales, and that I spoke about an agreement of five year period; but again, that I am not having to buy a pig in a poke; if IBM could not achieve some reasonable level of sales by the third year, they would be able to back out of the agreement.

11 Q What did Mr. Oztemel or Mr. Giffen say about the
12 proposition you put of the honeymoon, rather than the pig
13 in the poke?

14 A They were very willing, since Mr. Oztemel discuss-
15 sed with me the fact that he wa convinced Mr. Akhimov would
16 perform as I had offered.

17 Q What did Mr. Giffen or Mr. Oztemel say concerning
18 your suggestion of an advance against commissions?

19 A Mr. Oztemel was -- oh, the advance against com-
20 missions?

22 A There wasn't much discussion of it at that time
23 in the meeting. There was a little discussion afterwards,
24 which I will tell you about.

25 Q. I will get to that. I will ask you about that in

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2 a minute.

3 Let's confine ourselves for the moment --

4 A In the meeting there was not much discussion on
5 that at all because the thing that stood out was the four
6 percent commission.

7 Q What was discussed about that?

8 A Well, that Mr. Oztemel was overjoyed about that,
9 that number, the magnitude of it. And lest he get carried
10 away by it, I mentioned, I said, you know, if you were to get
11 the Mack Truck deal, you were hoping to get two percent on it.
12 Now, here we are getting four, but you in effect will be
13 getting two, which is as good as Mack, which itself he had
14 thought was very good.15 Q Let me stop here for a moment. The Mack Truck
16 deal that you make reference to, was that the deal that
17 Satra had been involved in with respect to the Kama
18 River project?

19 A Yes.

20 Q Was that the project for which you had been con-
21 sultant for Satra, as you discussed at the very beginning
22 of your testimony?23 A Yes, it was. I was intimately familiar with that
24 one.

25 Q You said that Satra had two percent commission on

1 Seld

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2 that?

3 A No, they had not yet negotiated but they were
4 aiming for a two percent commission. They were doing in-house
5 calculations on the basis of hoping to get the two percent.

6 Q And the proposition, then, that you put before
7 Mr. Oztemel, as you testified to, was that he would be
8 getting two percent on IBM and you would be getting two
9 percent on IBM?

10 A That's right.

11 Q What did Mr. Oztemel say?

12 A He was still overjoyed. He said, "Let's see how
13 fast we can get them to sign."

14 Q You made reference to a subsequent discussion
15 concerning the subject of advance against commissions. With
16 whom was that subsequent discussion held, and where?

17 A After the meeting in the hallway -- after the
18 meeting in Mr. Oztemel's office, in the hallway with
19 Hanno Mott and Jim Giffen or with one or the other, because
20 this was a lot of running, one of them made a side remark --

21 Q To whom did he make this side remark?

22 A I think one made it to the other in a way that I
23 would overhear, but I heard. Whether it was directed to me,
24 I don't know, you know. But a remark was made that, well,
25 if there are advances against commissions, that Doctor Stern

1 6eld

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2 would not get half, but the expense reimbursement schedule
3 would apply. And I immediately interrupted, I said, but
4 advance against commission is in the category of retainer as
5 current income which I am looking for, for my living.

6 Q To whom did you say that, Doctor Stern?

7 A To Mr. Giffen and/or Mr. Mott. There was not
8 immediate agreement, so I immediately convened a meeting in
9 Mr. Schloss' office, he being the treasurer of Satra.

10 Q Is that Max Schloss?

11 A That's right.

12 Q Who was present?

13 A Mr. Giffen and Mr. Mott; occasionally one of them
14 walking in or out.

15 Q And Mr. Schloss?

16 A And Mr. Schloss.

17 Q And you?

18 A And myself. The issue was resolved. Mr. Schloss
19 said that advances against commissions would be handled
20 exactly the same as any other current income, like retainers,
21 and forget it, the issue is over, "and you, Marvin, go out
22 and get an agreement; you will get your half without any
23 deductions. Don't worry about it."

24 Q Anything more said at that time?

25 A No, that was it.

1 7eld

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2 Q What was the next thing that happened with respect
3 to IBM?

4 A From then on I had again a series of discussions
5 with Mr. Stafford by phone and in person. Then, towards the
6 end of the following week, Mr. Stafford phoned me and said,
7 well, it looks like we wouldn't even have to have the trial
8 honeymoon, that if we do get into an agreement with Satra,
9 we'll go directly to the final one. We don't need the
10 awkwardness of a contingency agreement. And he then asked
11 for a meeting which would be a decisive one, is the best
12 word I could think of, to be held September 17. I have a
13 bit of --

14 Q Excuse me, Doctor Stern. You said that decisive
15 was the best word that you could think of?

16 A Yes.

17 Q The testimony has to be what was said at the
18 time, as best you can recall.

19 A All right. We were going to have a meeting with
20 Mr. Witham on the kind of agreement that IBM would consider
21 or would be willing to enter into with Satra. That to me
22 means decisive.

23 Q Was that what Mr. Stafford said?

24 A Yes, sir.

25 THE COURT: When Mr. Stafford asked for a meeting

1 8eld

Stern-direct

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2 he indicated that it would be with Mr. Witham to determine --

3 THE WITNESS: Yes, sir.

4 THE COURT: To determine the substance of the
5 agreement?

6 THE WITNESS: That's right.

7 THE COURT: All right.

8 Q Mr. Witham was Mr. Stafford's superior, I think
9 you testified?

10 A That's right.

11 Q How was this information communicated to you? In
12 person or on the telephone?13 A That particular one which was tied in with
14 forgetting about the trial period, was on the phone.

15 (Continued on page 165.)

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Stern-direct

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2 Q Was this meeting held, that you made reference to?

3 A Yes.

4 Q When was it held?

5 A It was held September -- I have a bit of confusion --
6 either September 16th or September 17th, but I am convinced
7 now it was September the 17th.

8 Q Is that your best recollection?

9 A Yes.

10 Q Where was it held?

11 A It was held in Mr. Witham's office, but --

12 THE COURT: That is at IBM headquarters in New

13 York?

14 THE WITNESS: Yes. Opposite the UN.

15 A -- but the way it was arranged was, Mr. Oztemel
16 was out of the country, so I was to bring Mr. Giffen,
17 the next ranking officer.

18 Q And did you do that?

19 A We arranged, Mr. Stafford first wanted to meet
20 with me alone at lunch, before the meeting, and then we
21 would all have the meeting after lunch. So I had lunch
22 with Mr. Stafford; Mr. Stafford and I went over to Mr.
23 Witham's office. We were joined there by Mr. Giffen.24 Q With respect to this lunch between Mr. Stafford
25 and you, who invited whom, if you remember?

1 2 elmch

Stern-direct

2 A I suggested we get together for lunch, before.

3 If that is an invitation, you know --

4 Q That is what I was asking.

5 What was discussed?

6 THE COURT: At lunch?

7 MR. HELLERSTEIN: Yes, sir.

8 THE COURT: Just the two of you were there, I

9 take it?

10 THE WITNESS: Yes, sir.

11 A He reviewed again the points that we had agreed
12 on as a result of the many discussions, apparently to make
13 sure there was no misunderstanding. We went over, point
14 by point --15 Q Was that discussion the same as you just testified
16 to?17 A Yes. This being all on his initiative. He
18 went over each point at a time. Yes, yes, et cetera.19 We drank a toast, and we were going to next drink
20 a toast in Moscow. That is what he said. It was being
21 finalized.22 Q And then was this meeting of the four held, Mr.
23 Witham, Mr. Stafford, Mr. Giffen and you?24 A And there was also Mr. Hendricks at this meeting,
25 though.

1 3 elmch

Stern-direct

2 Q Was this at IBM headquarters?

3 A Yes.

4 Q What was said there, in substance?

5 A Mr. Witham presented to us the draft of a letter
6 of intent for agreement between IBM and Satra.

7 Q To whom did he present it?

8 A To Mr. Giffen.

9 Q Was anything said about this presentation?

10 A Well, there were several minor things that had to
11 be cleaned up in the draft.

12 A Are you interested in that?

13 Q Well, let me go on.

14 I show you what has been marked as Exhibit MM
15 and I ask you if you can identify that document.

16 A This is the final document.

17 Q Was this document delivered by IBM World Trade
18 Corporation to Mr. Giffen at the meeting?

19 A Yes.

20 Q Did you see it at the time?

21 A Yes.

22 MR. HELLERSTEIN: I offer it in evidence.

23 THE COURT: When you say it was final, do you mean
24 that there was a draft first by Mr. Giffen and then there
25 was some discussion and it was retyped?

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2 THE WITNESS: That's right.

3 THE COURT: This was the final version, is that
4 right?

5 THE WITNESS: That's right.

6 MR. HELLERSTEIN: I offer it in evidence, your
7 Honor.

8 MR. HILL: No objection.

9 THE COURT: Received.

10 (Plaintiff's Exhibit MM was received in evidence.)

11 (Pause.)

Q Dr. Stern, I refer you to the second paragraph of that document, MM, and to its reference of a percentage of 3.5 described as a commission to be payable to Satra on sales of data processing equipment. You made reference to a commission of 4 percent.

Was there discussion how there was this change?

As a result --

19 0 Just tell the discussion.

20 A Yes.

21 The story is we had been informed of IBM's total
22 sales, 85 percent of those sales consisted of data
23 processing equipment, et al. The remaining 15 percent
24 consists of office products, the typewriters, the copying
25 machines, and what-have-you. We had discussed the fact that

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2 were we to enter into an agreement, we would represent
3 or drag along all IBM. Now, at the meeting IBM was embarrassed
4 to say that they had not done their homework well; they
5 had not discussed with the manager of the division who
6 handled office products, and in a large organization one
7 does not make commitments for a division manager without
8 his knowing about it.

9 Therefore, they asked could we possibly wait
10 for incorporating office products for a week or so until
11 they could discuss it with him.

12 Q Was there a commission discussed for office
13 products?

14 A We said surely we would wait. They notified us
15 that they make double the commission themselves -- well,
16 that they make a significantly higher profit on office
17 products than they do on data processing. They would
18 thereby be willing to give us double the commission --

19 Q 7 percent?

20 A On office products -- in the net, than on data
21 processing.

22 So with a very simple mental calculation, it
23 works out that if we get 3-1/2 percent on 85 percent
24 of the total volume, together with 7 percent on 15 percent
25 of the total volume, the aggregate average commission comes

1 || 6 clinch

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2 out to be 4 percent, which was what our informal agreement
3 was. That is the explanation of the number.

4 Q Not being a mathematician, I will accept your
5 word it comes out to 4 percent.

A That is understandable.

7 Q I refer you to the last sentence on the first
8 page of the document, stating "it will also be terminable by
9 us at any time if Mr. Oztemel should cease to be actively
10 engaged in your operation," referring to Satra's operations.

11 Was there any discussion during this meeting
12 as to whether or not your services were to be indispensable
13 to IBM?

14 A No.

15 Q Did anyone bring that up?

16 A Only as far as Mr. Oztemel was in Europe, Mr.
17 Giffen was going overseas that very evening, and I was
18 delegated during the next week to work with IBM attorneys
19 and what-have-you, to get this into a final contract form
20 But that was the only mention of my having to be involved

Q Was there any discussion that your services
should be made an indispensable condition of the contract?

23 A No, sir.

24 Q Did Mr. Giffen ever question whether or not IBM
25 was so requiring?

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2 A No.

3 Q What happened next, Dr. Stern, with respect to
4 IBM?5 A During the next week, before this I had given
6 Mr. Stafford a copy of the standard Satra Consultant form
7 agreement, to form the basis of getting a final one
8 which would be mutually acceptable between IBM and Satra.9 Q You said that you were delegated to carry on
10 discussions with IBM, looking towards the completion of
11 a final document?

12 A That's right.

13 Q Were such discussions held?

14 A Oh, yes. From this date on, there were a great
15 many discussions finalizing the agreement between IBM and
16 Satra.17 Q Did there come a time when a final agreement
18 was prepared?

19 A Yes.

20 Q Who prepared it, IBM or Satra?

21 A IBM.

22 Q Was such an agreement at some point in time
23 tendered?

24 A Yes.

25 Q Or signed. Were you involved in that?

1 8 elmch Stern-direct

2 A Yes.

Q Tell the jury how you were involved.

4 A Again, Mr. Oztemel and Mr. Giffen were each
5 away. I had meetings with Mr. Stafford, then with a
6 Mr. McCobb, who was the IBM attorney who was doing it.

7 Q M-c C-o-b-b?

8 A Yes.

9 They offered their final version to me in the
10 late afternoon of September the 21st. Mr. Witham was to
11 be leaving town something like 9:45 a.m. September the
12 22nd. I stayed up overnight and did what I could. I had
13 a meeting with Mr. McCobb at 8:00 a.m. on the morning
14 of September the 22nd.

15 Fortunately, they use these IBM typewriters
16 with the magnetic tape so they were able to very rapidly
17 put in the changes that I suggested, and they were willing
18 to agree on.

19 Mr. McCobb and I went to Mr. Witham about 9:30.
20 Mr. McCobb put his initials on it and Mr. Witham signed it.

Q I show you Plaintiff's Exhibit II for identification, Dr. Stern. I ask you if you can identify it.

23 A This is the document that Mr. Witham signed with
24 Mr. McCobb's initials next to his, on September 22nd, at
25 about 9:30 in the morning in his office.

2 Q What happened after it was signed by Mr. McCobb?

3 A No, it was signed by Mr. Witham.

4 Q Excuse me, by Mr. Witham.

5 What happened next?

6 A I took the document to the Satra office to get
7 their signature.

8 Q To whom did you bring it?

9 A To Mr. Max Schloss, who was now the senior
10 executive here in the States.

11 Q Where was Mr. Oztemel?

12 A In Moscow, Mr. Giffen being in Moscow, also.

13 Q What did you do with Mr. Schloss?

14 A I gave him the document which had been signed
15 by IBM for him to review and sign it on behalf of Satra.

16 Q Did he sign it?

17 A Yes.

18 MR. HELLERSTEIN: I offer the document into evidence
19 as Plaintiff's Exhibit H.

20 MR. HILL: No objection, your Honor.

21 THE COURT: All right, received in evidence.

x 22 (Plaintiff's Exhibit H was received in evidence.)
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2 Q I ask you to look at the last page of the copy
3 before you, Dr. Stern, and are those the signatures of
4 Mr. Witham and Mr. Schloss you refer to in your testimony?

5 A Yes.

6 Q And with respect to the initials next to Mr.
7 Witham's name, for IBM World Trade Corporation, whose are
8 they?

9 A Mr. McCobb's. Witham asked Mr. McCobb to initial
10 it before he would sign it.

11 Q I ask you to look at the bottom paragraph on the
12 first page, the paragraph marked "A."

13 Was this agreement intended to cover data
14 processing machines?

15 A This agreement was.

16 THE COURT: In other words, the answer is "yes"
17 to that?

18 THE WITNESS: Yes.

19 Q I ask you to look at the fourth page entitled
20 "LL. Fee payable by company."

21 With respect to the commission rate of 3-1/2
22 percent referred to in Paragraph A of the document, was
23 this subject to the same understanding that you had in your
24 meeting which you testified previously concerning the aver-
25 aging between this 3-1/2 percent and 7 percent for

1 2hpmach

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2 office machines?

3 A Yes, but another document would have to be
4 executed. The 3-1/2 percent here was only applicable to
5 the data processing.

6 MR. HELLERSTEIN: I would like to read
7 Paragraph B to the jury:

8 "Upon execution of this agreement, the company
9 shall advance a retainer to the consultant of \$25,000
10 and ninety days thereafter, an additional \$25,000.

11 These advances shall be charged against future
12 commissions. Six months from the date of execution of
13 this agreement, the need for further advances shall be
14 reviewed by the consultant and the company in the light
15 of sales results and the future outlook for sales."

16 THE COURT: The company referred to there is IBM
17 and the consultant referred to is Satra.

18 MR. HELLERSTEIN: Thank you, your Honor.

19 Q Did this agreement then give Satra the potential
20 of income based on 3-1/2 percent of commissions and, in
21 addition, a retainer of \$50,000, which is also to be an
22 advance against commissions?

23 A Yes.

24 MR. HELLERSTEIN: I ask you to turn the page to
25 III, "Term of agreement." I would like to read Paragraph 8:

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Stern-direct

2 "The term of this agreement shall be for five
3 years beginning from the date of execution hereof" --

4 That is September 22, 1971 to September 22, 1976.

5 -- "provided, however, that in the event that
6 the annual sales volume of the company's data processing
7 machines to the territory does not exceed \$50,000,000
8 by the end of the third year of the agreement, the company
9 may terminate the agreement by giving written notice of such
10 termination to the consultant within thirty days of the
11 termination of the three-year period. This agreement shall
12 also be terminable by the company at any time if Mr.
13 Oztemel should cease to be actively engaged in the operations
14 of the consultant. If this agreement shall be terminated
15 under this paragraph, the consultant shall continue to
16 receive commissions thereafter on amounts received by the
17 company from the sale of the company data processing
18 machines to the territory which the consultant had negotiated
19 during the term of the agreement for a period of two years
20 of the date of such termination."

21 Q Was there any discussion as to whether or not
22 there should be a condition in the agreement that your
23 services or Mr. Oztemel's services should be indispensable?

24 A No.

25 THE COURT: We will now have the morning recess.

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2 (Recess.)

3 (In open court; jury present.)

4 M A R V I N S T E R N , resumed.

5 Q Dr. Stern, I show you Exhibit I for identification.
6 a document entitled "Consultant and financial representation
7 between Satra Consultant Corporation and IBM World
8 Trade Corporation."

9 Can you identify this document?

10 A Yes.

11 Q What is it?

12 A It is exactly the same as the document before,
13 except the first one was between IBM and Satra Corporation,
14 and the new one is between IBM and Satra Consultant
15 Corporation.

16 Q At whose request was the change made?

17 A Satra's.

18 MR. HELLERSTEIN: I offer it into evidence.

19 MR. HILL: No objection.

20 THE COURT: All right. Received.

21 xxx 21 (Plaintiff's Exhibit I was received in evidence.)

22 22 THE COURT: Was this executed the same day as
23 the first version, if you want to call it that, or sometime
24 afterwards?

25 THE WITNESS: I can only give you the information

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2 I have. I made arrangements on September 22nd for the first
3 one to be re-executed, but then I had to leave town, so
4 I don't know.

5 Q In any event, your testimony is, the change is
6 the change in name between Satra Corporation and Satra
7 Consultant Corporation?

8 A Yes.

9 Q With Satra Consultant Corporation, the subsidiary,
10 becoming party to the contract?

11 A Yes.

12 MR. HELLERSTEIN: I am not clear, your Honor, if
13 you ruled on my offer to introduce it into evidence.

14 THE COURT: Yes, I ruled favorably, and there
15 was no objection.

16 MR. HELLERSTEIN: Thank you.

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2 Q I show you Exhibit J for identification, Doctor
3 Stern, and I ask you to identify this document.

4 A Yes, I can.

5 Q What is it?

6 A It is, as an inducement for IBM, to change their
7 agreement from one with Satra Corporation to an agreement
8 with Satra Consultant Corporation, and to assure IBM that
9 they will still get the benefits of all the services they
10 had hoped to get under the original; they guarantee those
11 services.

12 Q In other words, Exhibit J is a guarantee of
13 Satra Corporation to IBM for whatever may be the obligation
14 of Satra Consultant Corporation?

15 A That's right.

16 MR. HELLERSTEIN: I offer it in evidence.

17 MR. HILL: No objection.

18 THE COURT: Received.

xvx 19 (Plaintiff's Exhibit J was received in
20 evidence.)

21 Q Doctor Stern, I show you Exhibit E for identifi-
22 cation, a letter from Mr. Schloss of Satra Consultant
23 Corporation to you, dated September 22, 1971, and ask you if
24 you received that letter?

25 A Yes.

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2 MR. HELLERSTEIN: I offer it into evidence.

3 MR. HILL: No objection, your Honor.

4 THE COURT: Received.

5 (Plaintiff's Exhibit was received in evidence.)

6 MR. HELLERSTEIN: I will give copies to the jury.

7 This is a letter addressed to Doctor Stern, dated
8 September 22, 1971.9 "In connection with the agreement presently being
10 negotiated with IBM World Trade Corporation for representation
11 of it in the Soviet Union, we would like to advise you that
12 it is in our best interests that this agreement be concluded
13 by and between the Satra Consultant Corporation and IBM
14 World Trade Corporation with Satra Corporation our parent
15 company acting as guarantor on its own behalf and on behalf
16 of its other subsidiaries. Should such an agreement be con-
17 cluded with Satra Consultant Corporation, we of course,
18 undertake to guarantee the agreement entered into between
19 you and our parent company, Satra Corporation, dated
20 September 21, 1971. Any amounts which may become due and
21 payable to you by virtue of the agreement with IBM World
22 Trade Corporation shall be our obligation to you as well as
23 that of our parent company.24 "Very truly yours, Satra Consultant Corporation
25 by -- "

2 Q Do you recognize the signature, Doctor Stern?

3 A Yes, Max Schloss.

4 Q And you knew him to be the treasurer of Satra
5 Consultant Corporation?

6 A Yes, and the other one also, he was treasurer of
7 both of them, I believe.

8 Q At the lower left, it reads: "Guaranteed and
9 approved, Satra Corporation, by" and there is a signature.
10 Is that Mr. Schloss' signature?

11 A Yes, it is.

12 Q So he was the treasurer of both Satra Corporation
13 and Satra Consultant Corporation?

14 A Yes.

15 Q And this is their guarantee to you?

16 A Yes, it is.

17 Q Doctor Stern, I show you Exhibit K, the document
18 entitled Supplemental Agreement between Satra Consultant
19 Corporation and IBM World Trade Corporation, modifying the
20 consultant and financial representation agreement made as of
21 September 22, 1971.

22 Can you identify this document?

23 A Yes.

24 Q On page 2, are these the signatures of IBM World
25 Trade Corporation and Satra Consultant Corporation?

2 A I believe so.

3 Q What was the purpose of this document, if you
4 know?

5 A Yes. This is the addendum I had spoken about
6 before, whereby office products is included into the original
7 agreement with Satra, but here the commission is for seven
8 percent.

9 Q Is it your testimony that the three and a half
10 percent commission under the data processing contract and the
11 seven percent commission under the office products, by
12 mathematical calculation will come out to four percent?

13 A Yes.

14 MR. HELLERSTEIN: I offer it.

15 MR. HILL: No objection.

16 THE COURT: Received.

xvx

17 (Plaintiff's Exhibit K was received in evidence.)

18 Q Doctor Stern, the agreement between IBM and
19 Satra Corporation which the jury previously saw, called for
20 a \$25,000 payment being made by IBM to Satra in October of
21 1971. Do you recall that?

22 A Yes.

23 Q Did there come a time when you were paid any sum
24 by anyone at Satra?

25 A Yes.

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- 2 Q How much were you paid?
- 3 A Half of \$25,000. I was given \$12,500.
- 4 Q Without any deduction?
- 5 A That's right.
- 6 Q About what time were you given this?
- 7 A About October the 10th or so.
- 8 Q Doctor Stern, following that date, did you have
9 any conversations with anyone at Satra concerning your
10 arrangement with Satra Corporation, your contract with Satra
11 Corporation?
- 12 A Yes.
- 13 Q When was that?
- 14 A On -- well, let me amend myself. There had been
15 a very minor comment earlier in October, but nothing subse-
16 quent.
- 17 Q The statement you gave, what date was it?
- 18 A On November 16, at 2:30 in the afternoon,
19 Mr. Oztemel with me and Mr. Hanno Mott and his attorney were
20 both present.
- 21 Q At whose request was this held?
- 22 A He finally asked for this particular meeting.
- 23 Q You were present, Mr. Mott was present and
24 Mr. Oztemel was present?
- 25 A That's right.

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2 Q What was said by Mr. Oztemel or Mr. Mott to you
3 and what did you say?

4 A Mr. Oztemel said he will come right to the point.
5 He likes working with me, so I should be sure to take this as
6 being non-personal. However, for commercial and legal
7 reasons, our agreement between myself and Satra is unworkable
8 in its present form and would have to be revised.

9 Q Whose phrase is that, for commercial and legal
10 reasons?

11 A His. I think -- yes, commercial was the first
12 word, and then legal. For both commercial and legal reasons.

13 Q Did he say what commercial reasons he had in mind?

14 A No.

15 Q Did he say what legal reasons he had in mind?

16 A No.

17 Q What did you say?

18 A I gulped. I said, I don't know what you mean, what
19 am I supposed to do? He said I should get my attorney to get
20 in touch with his.

21 Q Anything more said at the meeting?

22 A The meeting was adjourned.

23 THE COURT: May I ask whether you had an attorney
24 advising you prior to this time?

25 THE WITNESS: In early October I introduced an

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2 attorney in an effort to clean up the agreement of August 31--
3 September 1 and my attorney had had a meeting with Hanno Mott,
4 as a result of which she had submitted a version of a cleaned
5 up agreement. That is the answer.

6 Q Doctor Stern, with respect to Judge Lasker's
7 question, had there been any discussion between you and
8 Mr. Oztemel or anyone else at Satra Corporation as to whether
9 or not the August 31 proposal to you accepted by the
10 September 1st letter back was a final agreement or something
11 that was just some tentative arrangement between you?

12 A Oh, no. It was a final agreement.

13 MR. HILL: I'm going to move to strike, your
14 Honor.

15 THE COURT: You weren't asked what your thought
16 wis. Mr. Hellerstein was asking you whether there was a dis-
17 cussion on that point among you or between you.

18 THE WITNESS: No.

19 Q What was the discussion concerning any work that
20 lawyers had to do with respect to that agreement?

21 THE COURT: At which time are we speaking of now?

22 MR. HELLERSTEIN: Following August 31. I'll ask
23 Doctor Stern to identify any conversation.

24 MR. HILL: He's already answered that there was
25 no discussion.

2 THE WITNESS: No, that was not the same thing.

3 THE COURT: Go ahead, answer the question.

4 A Very shortly after we had an agreement, which is
5 a rather sloppily worded agreement, Mr. Oztemel said, and
6 Mr. Mott said, nobody questioned the fact that it was a valid
7 or binding agreement, but it should be cleaned up in form,
8 and things like that. Towards that end Mr. Mott and I got
9 together to revise it in form, not in substance. Mr. Mott
10 prepared a draft of his proposed revision of the form of the
11 August 31st agreement.

12 MR. HILL: Your Honor, I have really tried to
13 refrain from objecting, but I must move to strike. The
14 answer is a dissertation. It is not addressed to the question
15 put on direct.

16 THE COURT: Mr. Hill, I agree that you have been
17 very calm about objections, although I don't really think
18 there have been many occasions to call for objections; but
19 you have been liberal in your attitude. However, I disagree
20 with you with regard to this particular objection. The
21 question was asked what discussions ensued after the 31st of
22 August with regard to the need for revision, if you want to
23 call it, of the agreement. Doctor Stern has answered so far.
24 But stick to the subject.

25 THE WITNESS: All right.

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2 THE COURT: So as I understand it, you met with
3 Mr. Mott once and he prepared a proposed, let me call it in
4 my words, revision of the draft; is that correct?

5 THE WITNESS: As to form, that's correct.

6 THE COURT: I am not characterizing it.

7 THE WITNESS: Right.

8 Q The agreement between IBM and Satra called for a
9 payment to be paid of \$25,000 in December of 1971. Were you
10 paid half or any part of that payment?

11 A No, I was not.

12 Q Were you ever again paid any money by Satra
13 Corporation?

14 A No, I was not.

15 Q To this very day?

16 A That's correct.

17 Q So, is it your testimony that after you received
18 the payment of \$12,500 on I think you said -- when was that?

19 A Something like the end of the first week of
20 October.

21 Q Were you ever again paid anything by Satra?

22 A No, I was not.

23 MR. HELLERSTEIN: No further questions.

24 (Continued on page 188.)

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Stern-cross

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2 CROSS-EXAMINATION

3 BY MR. HILL:

4 Q Doctor Stern, you have had your diary in front
5 of you while you have been testifying, haven't you?

6 A Yes, sir.

7 Q You told us about a meeting that took place on
8 the 13th, I think, of August, when Plaintiff's Exhibit A was
9 discussed; is that correct?

10 A (No response.)

11 Q Did you testify about that meeting on the 13th,
12 sir?

13 A May I see Exhibit A? I'm not sure I know what
14 you're talking about.

15 THE COURT: Here (handing).

16 A No, I did not testify about a meeting on August
17 13th. I testified about the dinner on August the 10th.

18 Q Let me ask you to examine your diary. Is there
19 an entry that reflects that meeting on August the 10th?

20 A No.

21 Q You had a meeting on August 24 with Mr. Oztemel
22 at which you discussed Plaintiff's Exhibit B which was another
23 version of this agreement that you told us about. Is that
24 agreement referred to in your diary, or is that meeting
25 referred to in your diary?

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Stern-cross

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2 A On August 24 my diary shows a meeting at IBM.

3 Q May I have an answer to my question now,

4 Mr. Stern?

5 A No.

6 Q Thank you.

7 You have told us that you made a telephone call
8 on August 28 to Mr. Oztemel; is that correct?

9 A Yes, sir.

10 Q Is there a reference in your diary to that
11 telephone call?

12 A No.

13 Q You told us about a meeting you had with
14 Mr. Oztemel on the 31st when Plaintiff's Exhibit C was signed.
15 That is the alternative proposals. Is that meeting referred
16 to in your diary, sir?

17 A Only the meeting at IBM.

18 Q Could I have an answer to my question, sir?

19 A No.

20 Q You have told us that you had a meeting with
21 Llewellyn Thompson, the former United States Ambassador, on
22 the 23rd day of June; is that correct, sir?

23 A Yes.

24 Q Is there a reference to that meeting in your
25 diary, sir?

2 A No.

3 Q By the way, Doctor Stern, who introduced you to
4 Mr. Thompson?

5 A A Mr. Frank Orban, and an employee of Satra.

6 Q I think you told us that some time in mid July
7 you had a telephone conversation with Mr. Jones of IBM World
8 Trade; is that correct?

9 A Yes.

10 Q Is there a reference to that telephone call in
11 your diary, sir?

12 A No.

13 Q On August 6th you told us you had a call from
14 Mr. Stafford, you being in Los Angeles; is that correct?

15 A Yes.

16 Q Is there a reference to that telephone conver-
17 sation in your diary?18 A By the way, just for the record, this is not a
19 diary. This is a calendar which I carry. It's not a diary.20 Q Is there a reference in your calendar to that
21 telephone conversation with Mr. Stafford?

22 A No.

23 Q Are there references in that calendar to any
24 telephone conversations with Mr. Stafford during the month of
25 August?

2 A No.

3 Q You had a meeting with Mr. Stafford on August 10th;
4 is that right?

5 A I believe that was the date.

6 Q Is there reference to that meeting in your
7 calendar, sir?

A I think you asked me that, and I answered no.

9 Q On September the 3rd there is a reference in
10 your calendar to a meeting which you have described with
11 Messrs. Stafford and Hendricks at the Satra offices; is that
12 correct?

13 A Yes.

14 Q You testified here this morning that there were
15 a -- and I believe you used the word -- flurry of meetings
16 after September 3rd. Will you examine your calendar and tell
17 me how many meetings are referred to in your calendar between
18 September 3rd and September 21st?

19 A Before I answer, I must take issue with the state-
20 ment in the question which is not what I said. I said there
21 was a flurry of activity and discussions, many of which, if
22 not most, were by phone.

23 Now, if we then put that aside, would you now
24 repeat the question, please?

25 Q Certainly.

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2 A Thank you.

3 Q How many discussions are referred to in your
4 calendar between September 3rd and September 24th?

5 THE COURT: 24th or 21st?

6 MR. HILL: 21st, I'm sorry.

7 A The only discussions referred to in my calendar
8 was -- what's the ending date?

9 Q 21st.

10 A Four.

11 Q Would you read what your calendar says with
12 respect to those four meetings?

13 A Yes. May I help you?

14 THE COURT: You don't need to help him.

15 Q Would you just answer my question.

16 A Surely. I'm sorry. On September the 8th I have
17 a note to call Stafford. On September 8, I have a note,
18 lunch with Stafford. On September 16, I have a note, lunch
19 with Stafford. On September 21st, I have a note, meeting
20 with Stafford.21 Q Were those the discussions that you were describ-
22 ing this morning on your direct examination?

23 A Other than the telephone discussions.

24 Q To which there is no reference in this calendar.

25 MR. HELLERSTEIN: Objection, your Honor. He made

2 some reference.

3 THE COURT: Are there or aren't there references?

4 There are some references or no references to telephone calls
5 in your calendar.6 THE WITNESS: The only reference to telephone
7 call in the calendar is a note to myself on the 8th that I
8 was to make a call to Stafford.9 THE COURT: That is for the period we are talking
10 about?

11 THE WITNESS: That's right.

12 (Continued on page 194.)

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Stern-cross

2 Q Let's go back to the end of 1970, Dr. Stern.

3 What were you doing at the end of 1970?

4 A I was doing management consulting work.

5 Q Was this done out of your home in Los Angeles?

6 A I'm not sure I understand the question. I would
7 spend much of my time at that company for whom I was
8 doing consulting.

9 Q Did you have an office?

10 A I either operated out of my home or operated out
11 of an office at a company for whom I was doing consulting.

12 Q Was one of those companies the Kollsman Company
13 on Long Island?

14 A That's right.

15 THE COURT: How do you spell that?

16 MR. HILL: K-o-l-l-s-m-a-n, I believe, your
17 Honor. I think that is pretty close.

18 THE WITNESS: That's right.

19 Q What were you doing for Kollsman?

20 A I had been offered the job as the president of
21 the company. I was undecided, and I wanted to examine it.
22 I entered into something like a four-month consulting
23 arrangement with the board, whereby I would spend almost
24 full time at Kollsman examining what their capabilities
25 were, what their potentials were, and advising them on

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Stern-cross

2 planning relative to moving the company to new and
3 profitable fields.

4 Q What business was Kollsman in?

5 A Kollsman is an instrument firm which had been
6 doing primarily avionics instruments. They had a certain
7 amount of high precision optical and electro-optical
8 capability also, which was being used in non-aerospace
9 fields.

10 THE COURT: Was it a manufacturer or distributor
11 or what?

12 THE WITNESS: It was a manufacturer, design,
13 things like that.

14 Q Was this a full-time job?

15 A I was a consultant. I got paid a consultant fee,
16 in amount to the time I spent. I did spend some time doing
17 other things, also.

18 MR. HELLERSTEIN: May we approach the side bar,
19 your Honor?

20 (At the side bar.)

21 MR. HELLERSTEIN: If mitigation of damages is not
22 in the case, I would object, and I think it is not, I object
23 to any continued questions along this line.

24 THE COURT: I don't necessarily assume that Mr.
25 Hill is asking questions for that purpose.

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2 MR. HILL: I certainly am not.

3 THE COURT: Would you state what your purpose is?

4 MR. HILL: Sure. I think we are entitled to show
5 what Dr. Stern's experience is because it is our view in
6 this case, as your Honor knows, that he brought nothing
7 to Satra other than his representations that he could
8 produce IBM as a client. He was unnecessary, but for that.9 THE COURT: I agree with you that's relevant
10 if the jury should agree with you that representations
11 were made.12 MR. HELLERSTEIN: It seems to me that point is
13 quite irrelevant, your Honor, because whether or not
14 Stern contributed anything is not material. The material
15 issue is whether the contract was made on the basis of the
16 plaintiff's representations. I think the qualifications of
17 Dr. Stern seem to me to be in issue.18 THE COURT: I think the qualifications are not
19 necessarily in issue. I think they are relevant to the
20 question that the jury will have to decide, of whether or
21 not there were false representations. That, in turn, may
22 depend in their mind on the kind of man they are dealing
23 with.24 You are perfectly free to argue the point that you
25 have made just now to the jury itself.

2 MR. HELLERSTEIN: Thank you, your Honor.

3 (In open court.)

4 MR. HILL: May I have the last question and answer
5 read?

6 THE COURT: Yes.

7 (Record read.)

8 Q Other consulting work, Dr. Stern?

9 A Yes.

10 Q In connection with these consulting jobs, were
11 you paid on what I think is known as a per diem basis?

12 A There are varying arrangements.

13 Q What were your arrangements?

14 A With whom?

15 Q Kollsman.

16 A The arrangements with Kollsman were, they gave
17 me a four-month agreement to spend as much of my time as
18 possible, essentially the full. They would pay me \$450
19 a day for every day I would so spend. They would cover
20 all my living expenses and I would commute back home to Los
21 Angeles every week end.

22 Q D. Stern, at or about this time, had you ever
23 been to Russia?

24 A No, I hadn't.

25 Q Do you speak Russian?

1 || 5 elmch Stern-cross

A Now or then?

3 Ω Then.

4 A No, I did not.

5 Q At any time prior to 1970 had you ever been
6 retained to assist in any American company, to obtain export
7 licenses for the export of goods manufactured in this
8 country to Russia?

9 A No, I had not.

10 Q Had you ever been retained prior to 1970 to
11 assist an American company in entering into barter trans-
12 actions with the Soviet Union?

13 THE WITNESS: May I ask the Court's indulgence?
14 Could the attorneys, the Judge and myself speak?

15 Q Don't you understand the question?

16 A Yes.

17 MR. HILL: Then, may I have an answer, your Honor?

18 THE COURT: Just a minute. I will allow Dr. Stern,
19 if he wants to take a short recess, to discuss something
20 that should be discussed with his counsel.

24 THE WITNESS: I will answer outright, then.

22 A As you know, I had been in the Department of
23 Defense --

24 THE COURT: Is there a question of security that
25 you want me to know about?

1 6 elmch

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2 THE WITNESS: Yes, sir.

3 THE COURT: I will be glad to discuss that with
4 the witness and counsel. The security, I take it, is not
5 personal security?

6 THE WITNESS: No.

7 THE COURT: All right.

8 (In the robing room.)

9 THE WITNESS: What I will say is, in Defense,
10 the office of Intelligence and Reconnaissance, and Director
11 of the Research and Engineering, the Secretary of Defense
12 worked with me. So I have a history in the field.13 After Defense, I was a consultant to various
14 agencies in the Government, including a special assignment
15 for John McCone when he was head of the agency and things
16 like that. And in relationship to some of those things
17 I may have been exposed to some means or other of getting
18 info. I don't think we ought to go into that. It's got
19 nothing to do with it.20 THE COURT: I think Mr. Hill's question is much
21 more specific than that. It is whether you had personally
22 participated in any barter transactions.23 THE WITNESS: I directed certain things to be
24 done, but I myself didn't get involved.

25 MR. HILL: All I want to know is what he was

1 7 elmch Stern-cross

2 involved in.

3 THE WITNESS: I, myself, no. But I was involved.

4 I directed things to be done.

5 THE COURT: That may be, but I don't think it's
6 necessary for you to bring that out.

7 THE WITNESS: That is what I want to make clear.

THE COURT: So you can state, I believe, that --

9 MR. HILL: The answer to the question is no, your
10 Honor.

THE COURT: That is what it seems to me. The answer to the question that Mr. Hill asked is "no."

13 (In open court.)

14 THE COURT: Perhaps for the benefit of the jury
15 the last question should be read back and Dr. Stern can
16 answer.

17 (Question read.)

18 A No.

19 Q Had you ever been retained by an American company
20 to assist in the financing of transactions between
21 United States companies and the Soviet Union?

22 A. HO.

Q Had you ever been retained to help an American
company to move into the Russian market in any way?

25 A. No. By the way, I assume all this means before

1 3 elmch Stern-cross

2 1971?

3 Q Yes.

4 THE COURT: I assume he means before the trans-
5 action that we have been discussing.

6 THE WITNESS: Yes.

7 Q Mr. Stern, in 1970, would you have described
8 yourself as an expert in the computer field?

9 A No.

10 Q Had you, prior to that time, ever been engaged
11 by a client to assist the client in installing an IBM
12 system?

13 A (No response.)

14 Q Do you understand the question, sir?

15 A Yes. The general answer is no.

16 Q Did you have any knowledge at the end of 1970
17 with respect to what the capabilities of the Soviet
18 Union were at that point in time with respect to computers?

19 A Yes.

20 Q What was that knowledge?

21 A As you are aware, I had been in the Department
22 of Defense and both while I was there and afterwards
23 I served the Government as a consultant, my area being
24 the assessment and analysis of either weapon systems or
25 strategic techniques and the technical capabilities

2 associated therewith.

In my consulting on such analyses and assessments
for the intelligence communities, I had been exposed to
the best data that the U.S. had available.

6 Q Is that the only knowledge you had?

7 A In addition, I had been an officer of the
8 Rand Corporation where they do those kinds of studies.

10 A I, myself?

11 Q Yes.

12 A No. I received them.

13 Q Let's turn to what you have described as the Kama
14 project. This was the Kama River project which involved,
15 I take it, the construction of a truck plant in the Soviet
16 Union.

17 Is that a fair description of it?

18 A Yes, it is.

19 Q Did there come a time when you became aware of
20 Satra's interest in that project?

21 A Yes.

Q From whom did you get that knowledge?

23 A From a Dr. Paul Proehl.

24 Q Who is he, sir?

25 A He was a professor of International law; he was

1 10 e inch

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2 a vice-chancellor at UCLA and while on a year's sabbatic
3 he was working with Satra.

4 Q What did he say to you when he told you about the
5 Kama River project?

6 A He told me that Satra was after it, they had
7 Mack Truck as a potential client; that the U.S. Department
8 of Commerce had given it an emphatic no on the possibility
9 of going ahead; how he felt that the Satra organization
10 was relatively unsophisticated in understanding or
11 monitoring the evolution of major U.S. policy changes, and
12 he asked could I meet with them and perhaps help them.

13 Q Did he describe the business of Satra to you?

14 THE COURT: What was your question? I wanted
15 to hear your question. It may have been the same as mine.
16 What was it?

17 MR. HILL: What did he say about Satra's business?

18 THE COURT: I wanted to ask this:

19 Is this the first contact with, or reference you
20 had to Satra?

21 THE WITNESS: The first contact.

22 Let me start really at the beginning --

23 THE COURT: I don't want to get a long story.

24 When did you first have any contact with Satra?

25 THE WITNESS: Dr. Prochl bumped into me on a plane
in December of 1970.

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1 hpmch Stern-cross

2 Q Was it on this plane ride that he told you what
3 you have just testified to?

4 A No.

5 Q Did he describe to you during the course of the
6 plane ride the business of Satra?

7 A Yes.

8 Q What did he tell you about it?

9 A He said they were perhaps the largest U.S. trading
10 firm doing business with the Russians.

11 Q Did he go into any further detail?

12 A Yes. He said the Russians had asked them to get
13 a major U.S. copper firm to get involved in exploration and
14 mining of copper, and do I know anyone to help.

15 Q Did he say anything else?

16 A I agreed to put him in touch with the president
17 of a major U.S. copper-mining firm.

18 Q Was anything else said on the plane ride?

19 THE COURT: This is the first one, in December
20 of '70?

21 MR. HILL: Yes, your Honor.

22 A Nothing of substance.

23 Q How long were you with Dr. Proehl on this
24 airplane?

25 A Probably for half of the time, like two and a half

1 2 hpmch

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2 hours.

3 Q Did Dr. Proehl say anything to you about the --

4 MR. HILL: Withdrawn.

5 Q Did Dr. Proehl identify any of Satra's clients
6 during the course of this conversation?

7 A He was very hesitant to do so. He may have
8 at that time mentioned Borg-Warner, I'm not sure, because
9 he was very, very hesitant. He either did it at that time
10 or after.

11 Q What is Borg-Warner, do you know?

12 A Borg-Warner is a firm which manufactures trans-
13 missions and things like that.

14 Q Is it a pretty big company, in your judgment?

15 A You are asking me?

16 Q Yes, sir, if you know.

17 A It's a reasonable sized company.

18 Q What does that mean to you? Do you have any
19 idea what their sales are?

20 A I can guess.

21 Q I am not asking you to guess, sir. I would like
22 you to tell me, if you know.

23 A Then I won't guess.

24 Q I am asking you if you know.

25 THE COURT: He wants to know if you know the

1 3 hpmch Stern-cross

2 volume. If you don't, just say so.

3 | A No.

4 Q Do you know what its net worth is, sir?

5 A No.

Q Do you know anything more than you have told us
about Borg-Warner?

8 A Yes.

9 Q What is that that you --

10 A Mr. Proehl told me he got Borg-Warner as a client
11 was because the president of Borg-Warner was a personal
12 friend of Mr. Giffen's father-in-law.

Q Mr. Giffen is the vice-president of Satra?

14 A That's right.

15 Q Did he identify any other clients of Satra
16 on this plane ride?

17 || A No. The only other thing he told me about the
18 || business is that they are the major importer of chrome.

Q Did he tell you anything else?

A He alluded to the truck thing but wouldn't go
into it and would not reveal the name of any companies.

22 Q He didn't mention Mack truck at this time?

23 A Not at that time at all.

24 O Have you now told us everything that you now recall
25 of this first meeting?

1 4 hpmch

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2 A He enjoyed his experiences in going to Moscow.

3 Q Anything else?

4 A Oh, that Giffen had been a student of his in
5 international law, a rather average, he said.

6 Q He said Giffen was a rather average student?

7 A Yes.

8 And he had helped him into getting into the field
9 that Giffen was in now, and this is why Mr. Proehl was
10 working with Satra.

11 Q Did he tell you anything else about Mr. Giffen?

12 A No.

13 Q Did he say anything about Mr. Giffen having written
14 a book about trade with the Soviet Union?

15 A I don't think that came up during that plane ride.

16 Q Did he tell you that Mr. Giffen was a lawyer?

17 A You may have misunderstood me.

18 Dr. Proehl was a professor of international law.

19 When I said that Mr. Giffen had been a student of his, I
20 meant to say in the field of law. I'm sorry if I didn't.

21 Q Did he tell you that Mr. Giffen was a lawyer?

22 A Yes.

23 Q Do you recall anything else that was said during
24 the course of this plane ride?

25 A No, I do not.

1 5 hpmch

2 Q Did there come a time when you had another
3 meeting with Dr. Proehl at which the subject of Satra was
4 discussed?

5 A Yes.

6 Q When was that?

7 THE COURT: Was the next one the one at which you
8 started to tell us about, where you discussed --

9 THE WITNESS: There were a series of calls and
10 meetings. Dr. Proehl lives very near to where I lived and
11 we would see each other socially.

12 The first area of activity was, I called the
13 president of this company and I put them together.

14 THE COURT: The copper company?

15 THE WITNESS: Several.

16 Q Dr. Stern, I wonder if you would bear with me
17 and just tell me when you next had a meeting after the
18 plane ride with Dr. Proehl, if you know.

19 A I don't know exactly when.

20 Q Do you recall what transpired at that meeting,
21 what did Dr. Proehl say to you and what did you say to
22 Dr. Proehl?

23 THE COURT: Which meeting?

24 MR. HILL: The next meeting that occurs after
25 the plane ride, your Honor, which we can't fix the date of.

1 6 hpmch

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2 A Dr. Proehl at some time or other, within a couple
3 of months on the outside, revealed to me that Mack Truck was
4 their potential client relative to the Kama River project.

5 Q He described Mack as a potential client?

6 A That's right.

7 Q What else was said?

8 A During the discussions he lamented the fact that
9 he felt Satra was not sophisticated enough to follow
10 actively the possible relaxation of some of the policies in
11 Washington, which might allow for U.S. participation in
12 the Kama River project.

13 Q Did he say anything to you with respect to Satra
14 having a Washington office at this time?

15 A Yes.

16 Q What did he say?

17 A He said that Satra Corporation was utilizing,
18 in Washington, the offices of J. M. Chambers & Company.

19 Q Did he tell you what J. M. Chambers & Company
20 was?

21 A Yes. Chambers was a retired marine colonel. Dr.
22 Proehl who had once worked in Washington himself, Dr.
23 Proehl considered Colonel Chambers to be a hack.

24 Q That's what he told you?

25 A Yes, sir.

1 7 hpmch

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2 Q What else did he tell you?

3 A And he said it's very unfortunate if Satra
4 allows major projects to go through their fingers because
5 they weren't exerting the proper effort to understand
6 evolution of policy in Washington, relative to the issues.

7 Q What else did he tell you, if you recall?

8 A He asked would I meet Mr. Oztemel and Mr. Giffen
9 and see if I couldn't evaluate their capability or lack
10 of capability of Washington representation, and advise them
11 accordingly.

12 Q Was anything else said?

13 A Not that I recall.

14 Q Was there any discussion on the subject when you
15 are going to get paid for this service?

16 A No. He did make efforts to get me involved
17 in the Cerro thing so I could collect a commission if
18 anything would come out of it, but I was involved and
19 I did it merely as a gratuitous thing, and I told him.

20 Q You told him you were going to do it for nothing?

21 A Cerro, absolutely.

22 Q Wait a minute. Now we're talking about the
23 Cerro Copper Company?

24 A That's right.

25 Q I am asking you, and I thought it was clear --

1 3 hpmach

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2 and anytime my questions aren't clear, you tell me -- did
3 you tell Dr. Proehl you would render these services in terms
4 of evaluation of Satra's capabilities to deal in the
5 Washington area for nothing?

6 A I said relative to what I did for them with
7 Cerro, which was merely to pick up a phone and make
8 introductions, whereas Dr. Proehl was urging me to stay on
9 the scene to collect some kind of fee, I said for picking
10 up a phone, that's nonsense. I said if I have to go down
11 to Washington and spend a couple of days, then I would have
12 to ask for a consulting fee.

13 Q So I am clear, because I am now no longer clear,
14 Dr. Stern, this conversation in which you picked up the
15 phone and called about Cerro, did that take place before
16 you met with Dr. Proehl the second time?

17 MR. HELLERSTEIN: I have an objection as to whether
18 Mr. Hill feels himself clear or not.

19 THE COURT: Yes, it is important the jury is clear,
20 but let's go on.

21 The question is whether you made the Cerro calls
22 and introduction before what?

23 MR. HILL: Before the second meeting with Dr.
24 Proehl on the airplane.

25 A I met Dr. Proehl on the plane. He discussed the

2 copper situation.

3 THE COURT: That was in December of 1970?

4 THE WITNESS: That's right.

5 A (Continuing) After the plane, I phoned the
6 president of this company and I put them together, for
7 them to start to meet. Dr. Proehl phoned me back and said
8 I should be involved to be sure I get a commission. I
9 said I'm not interested in that, you know, that's not my
10 thing.

When he subsequently asked me to offer my services to evaluate the capability of the Chambers Company in Washington relative to providing the kind of assistance that Satra would need, which was well beyond the normal export license, I said for me to spend a couple of days in Washington. I would have to charge a fee.

17 He said that's the least of the issues; please,
18 please, could I take the time, come in to New York, and
19 I would meet Mr. Giffen and Oztemel, and he hoped I would
20 see my way clear to devoting that much time.

2 Q And did there come a time thereafter when you
3 visited Mr. Oztemel and Mr. Giffen?

4 A Yes.

5 Q When was that, sir?

6 A There is a meeting on March the 25th. Whether
7 there was an earlier one or not, I'm not sure. I guess that
8 may have been the first one.

9 Q Was Mr. Oztemel at that meeting?

10 A He was supposed to be, but it worked out he was
11 not.

12 Q Whom did you meet with?

13 A Dr. Proehl was supposed to be there also, and he
14 did not come. I merely met with Mr. Giffen.

15 Q How long did that meeting last, if you recall?

16 A About an hour.

17 Q What happened at the meeting? What did
18 Mr. Giffen say to you and what did you say to Mr. Giffen?

19 A Giffen asked me would I help them to get export
20 licenses for \$4,000,000 worth of oil, tool machinery. I
21 said, I don't know anything about getting export licenses,
22 you know. We finally discussed the Washington office that
23 Satra was using to assist them. I said I might be able to
24 get you an evaluation on that. He was interested in that,
25 and he was interested in my coming back to meet with

1 2hpd

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2 Mr. Oztemel also.

3 Q Was there any discussion about your being retained
4 at that meeting, on the 25th?

5 A No, there was not.

6 THE COURT: Am I correct in understanding this
7 is the first time you had actually ever met with anybody
8 from Satra?

9 THE WITNESS: That's correct, except Mr. Oztemel.

10 THE COURT: The first time you had been to their
11 offices?

12 THE WITNESS: Yes, sir.

13 Q Did you advise Mr. Giffen with respect to what
14 your normal charges were as a consultant?

15 A Not at that meeting.

16 Q Did you discuss with Mr. Giffen what your
17 experience was, in Washington?

18 A No.

19 Q Did you discuss with Mr. Giffen where or from
20 whom you were going to get an evaluation of the Chambers
21 Company?22 A No, I merely offered to make a couple of tele-
23 phone calls. That's all.

24 Q Did you tell them who you were going to call?

25 A No.

2 Q Do you recall if anything else was said at that
3 meeting?

4 A No, I do not.

5 Q Can you tell us when the next meeting was --
6 let me withdraw that. Let me ask you if in connection with
7 the meeting of the 25th of March, whether there was any
8 discussion which you now recall with respect to the business
9 of Satra, what Satra did?

10 A I had already gained some of that knowledge
11 from Dr. Proehl and --

12 THE COURT: We know you have. What was discussed
13 there or --

14 A (Continuing) Very little in addition to what I
15 have already said.

16 Q Do you recall what was said?

17 A I'm afraid I do not.

18 Q Do you recall anything else that was said on the
19 25th?

20 A No, I don't.

21 Q Was there any discussion of the possibility of
22 a subsequent meeting with Mr. Oztemel?

23 A Yes. I mentioned that.

24 Q Was a date fixed?

25 THE COURT: Do you know whether on the 25th of

1 4hpd

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2 March, you fixed a date to meet with Mr. Oztemel?

3 THE WITNESS: I don't know if a date was fixed
4 or that was to be confirmed by phone. As a matter of fact,
5 my calendar shows that there was to be something during the
6 week of the 5th because I have a note.

7 THE COURT: Of April?

8 THE WITNESS: Of April.

9 Q Did that meeting take place?

10 A I show a meeting with Mr. Giffen and Mr. Oztemel
11 on April the 9th, at 10:00 a.m.

12 Q Do you recall that meeting taking place?

13 A Yes.

14 THE COURT: Was this the first time you met
15 Mr. Oztemel?

16 THE WITNESS: Yes.

17 Q Can you tell us at that meeting what was said,
18 what you said and what Mr. Oztemel and Mr. Giffen said, as
19 best you can recall?

20 A To make sure there is no misunderstanding, I
21 also show a meeting on April 16th. That one has been
22 crossed off, and the April 9th has not. So, I met with
23 them on one of those, I believe it was the one on April the
24 9th. Now let's go on.

25 THE COURT: This lawsuit, in my opinion, is not

2 going to depend on whether you met at --

3 THE WITNESS: Okay. Thank you. I just didn't
4 want to get hung up on nonsense.

5 THE COURT: Shall we go on. What was said at
6 the meeting, whether it was April 9th or April 16th.

7 A There was a meeting in Mr. Oztemel's office. In
8 attendance were, beside myself, Mr. Oztemel, Mr. Giffen and
9 a J. B. Scott, an Englishman who apparently did something
10 for Satra out of England.

11 May I proceed?

12 Q Please.

13 THE COURT: Yes.

14 A I had made a couple of calls to Washington.

15 THE COURT: You mean between the time you met
16 with Mr. Giffen and this meeting?

17 THE WITNESS: Yes, that's right.

18 Q Can you tell us who you called? I don't mean to
19 interrupt, but we might as well get it now.

20 A Yes. Of the people I called, the information
21 that I related, came from one individual, a John Golden,
22 who was director of SRI, that's Stamford Research Institute.
23 They run a large operation in Washington. Mr. Golden had
24 worked in the government, had worked in the White House, had
25 worked in the Department of State, was well acquainted with

1 6hpd

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2 what one might call the Washington scene. So, he, as a
3 favor, gathered some information for me in response to my
4 request.

5 Q Was this information with respect to Satra's
6 Washington operation?

7 A Both. By that time I asked him about that, and
8 I asked him what is this I hear about the possibility of the
9 Kama River project coming up again, and how would the
10 government feel about it.

11 Q Did you pass on to Mr. Oztemel at this meeting,
12 which we think occurred on the 9th, what you heard from
13 Mr. Golden?

14 A Yes, sir.

15 Q Will you tell us what you reported to
16 Mr. Oztemel?

17 A Yes. Number one, Col. Chambers was a very well-
18 liked individual, who had been a colonel in the Marines,
19 he had won the Congressional Medal of Honor, very well-liked.
20 Other than that, around Washington he was considered a
21 buffoon. He and his office could, and undoubtedly were,
22 very effective in going into the Department of Commerce with
23 an application for a license and getting it back. The
24 issues relative to such a major --

25 Q You are now reporting what Mr. Golden said?

1 7hpd

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2 A Yes, exactly, exactly.

3 THE COURT: I take it you are also reporting what
4 you told Mr. Oztemel.5 THE WITNESS: Yes. In fact, I had a page of notes
6 from telephone discussions that I had had with Mr. Golden.

7 Q Do you still have those notes?

8 A No, I don't. I looked and I don't have them.

9 Q Please continue. What else did you report to
10 Mr. Oztemel that you learned from Mr. Golden?11 A That there was something funny going on in
12 Washington. Whereas a couple of years earlier, when Henry
13 Ford had gotten into this possibility of building a truck
14 plant, this was definitely turned off. Now there seemed
15 to be many new players in the act from the government's side
16 and a study was done at very high levels of the government,
17 no pertaining to the truck exercise itself, but pertaining
18 to the general opening up of East-West trade and that many
19 players were getting involved from the Secretary of Commerce,
20 Secretary of Treasury, State, White House, national security,
21 and it seemed like they were starting to study the East-West
22 issue and the Kama project with merely the one sub-element
23 of that.

24 Q Is that all?

25 A He named some of the names of the players

1 8hpd

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2 involved.

3 Q Do you remember who they were?

4 THE COURT: I want to be sure whether you are
5 telling us what you reported to Mr. Oztemel or what
6 Mr. Golden told you and I don't think we have to go back to
7 what Mr. Golden told you, but --8 MR. HILL: That's the way my question is put,
9 your Honor.10 MR. HELLERSTEIN: I know Mr. Hill is engaging
11 in a memory test, but I think at this point we are going
12 far afield and I think we have reached that point.13 THE COURT: Let's finish with this meeting and
14 then we will go to lunch.15 A I relayed to Mr. Oztemel those of the names
16 that I thought in discretion I could relay and I withheld
17 some of the names I thought should be relayed.18 Q What names did you mention to Mr. Oztemel, if
19 you recall?20 A Yes, I recall. A Mr. Harold Scott, who was at
21 that time the Director of Office East-West Trade of the
22 Department of Commerce, had prepared --

23 THE COURT: Just what were the names?

24 A (Continuing) Also, I mentioned the name of an
25 Assistant Secretary of State.

2 Q Anybody else?

3 A I think I withheld all others.

4 Q Did you mention any companies that would be
5 interested in going into the Russian market that you had
6 gotten from Mr. Golden?

7 A That was not involved in our discussion.

8 Q Is there anything else you recall reporting to
9 Mr. Oztemel at this meeting that you got from Mr. Golden?

10 A That there may be something going on.

11 Q Nothing else?

12 A Nothing else.

13 THE COURT: We are going to terminate for lunch
14 now and resume at 2:00 o'clock, ladies and gentlemen.

15 (Recess at 12:45 p.m.)

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AFTERNOON SESSION

(2:05 p.m.)

(In open court; jury present.)

5 MARVIN STERN, resumed.

6 BY MR. HILL:

12 Over the luncheon recess, have you recalled any-
13 thing else that you reported to Mr. Oztemel as having come
14 from Mr. Golden?

15 A No.

17 A That's all.

18 Q What else was said at that meeting with
19 Mr. Oztemel and Mr. Giffen?

20 A Mr. Oztemel wanted to know if he can engage my
21 services as a consultant to continue to work along these
22 lines, since there had been scheduled a visit by a group of
23 some very high-level Russians to come over to the States
24 during the following month specifically in relation to the
25 Kama River plan.

1 Zeld

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2 Q You say continue your work along these lines.

3 You mean in terms of evaluating Satra's Washington operation?

4 A No. In terms of actively looking into the
5 policies that may be evolving as to allowing business in this
6 area.

7 Q In what area? The area of trade with Russia?

8 A More specifically, allowing a project such as
9 the truck one.10 Q Did you say anything to Mr. Oztemel with respect
11 to the experience that you had had in connection with trade
12 with Russia, at this meeting?

13 A No.

14 Q Did he ask you as part of this conversation
15 whether you had had any experience in representing American
16 companies trading with the Russians?

17 A No.

18 Q Did he ask you if you had had any experience in
19 obtaining financing in connection with trade with Russia?

20 A No.

21 Q Did Mr. Oztemel describe to you in any detail
22 what he expected you to do?

23 A None other than what I have already stated.

24 Q Was there a discussion of your rendering assist-
25 ance in connection with the obtaining of export licences at

2 this meeting?

3 A No, it was not.

4 Q Was there any discussion as to whether or not
5 you would work with Col. Chambers?6 A It was implied that I would coordinate with him
7 when necessary.8 MR. HILL: Your Honor, may I move that that
9 answer be stricken. I would like to have the conversation.
10 What is implied, I submit, is irrelevant.11 THE COURT: Yes, I will grant the motion. Would
12 you just answer the question specifically.

13 Repeat the question, please.

14 (Record read.)

15 THE COURT: Any specific discussion, not impli-
16 cation.

17 A I do not recall any specific discussion.

18 Q Did Mr. Oztemel, or, indeed, Mr. Giffen, tell you
19 at this meeting what they were doing in Washington in con-
20 nection with moving this trade with Russia forward?21 A They said that nothing was going on further in
22 Washington on this particular issue.23 Q Did they tell you that the Kama River project
24 was dead, at that point?

25 A They didn't use those words.

1 4eld Stern-cross 225

2 Q What words did they use?

3 A The Department of Commerce had said that the
4 U. S. Government would not allow it to go forward.

5 THE COURT: Are you telling us what somebody at
6 the meeting told you?

7 THE WITNESS: That is what they told me.

8 Q When you say they, was that Mr. Oztemel or
9 Mr. Giffen, or both?

10 A Both.

11 Q Did they ask you in words or substance to render
12 assistance in resuscitating or reviving that project?

13 A Generally, yes.

14 Q Did they give you any notion of what they con-
15 sidered to be the money size of the Kama River project; what
16 kind of contracts were involved in size of the Kama River
17 project; what kind of contracts were involved in dollars, if
18 that was discussed?

19 A Yes. They referred to it as something on the
20 order of a one billion dollar program.

21 Q Did you advise Mr. Oztemel that you were prepared
22 to go to work for him on this project, at that meeting?

23 A Yes, to a limited extent.

24 Q What did you tell him?

25 A I said I would be willing to spend a few days or

2 perhaps as much as a couple of weeks to look into it
3 actively when I could fit it in my schedule, or my obli-
4 gations that I had.

5 Q What was said, if anything, about compensation?

6 A Mr. Oztemel wanted to negotiate compensation with
7 me at that time. I said why doesn't one of you sit down
8 with me and we'll speak about it. Mr. Oztemel then suggested
9 that Iffen and I go to Mr. Giffen's office and discuss
10 compensation.

11 Q Did you advise Mr. Oztemel at that meeting what
12 you viewed as your regular compensation or per diem?

13 A No.

14 Q Dollars were never discussed?

15 A No.

16 Q Have you now told us as best you now recall
17 everything that happened at that meeting on the 9th?

18 A Yes.

19 Q Did you thereafter leave that meeting and go
20 have a conversation with Mr. Giffen?

21 A Yes, I did.

22 Q By the way, before we get to that conversation,
23 did Mr. Giffen participate in the conversation that you had
24 with Mr. Oztemel?

25 A Yes.

2 Q Do you recall anything specific that he said
3 during the course of this meeting?

4 A No.

5 Q Let's go to the conversation, then, with
6 Mr. Giffen. Where did that take place?

7 A In his office.

8 THE COURT: Was it immediately after the conver-
9 sation you just spoke about?

10 THE WITNESS: Yes, it was.

11 THE COURT: In other words, you left the room
12 you were in and went to his office?

13 THE WITNESS: That's right.

14 Q Would you tell us as best you now recollect
15 what was said in that conversation; what you said and what
16 he said.

17 A I said I assume that Dr. Proehl had informed
18 you of what my normal consulting rates were. He said yes,
19 he had. We both then said we understood that I would consult
20 at the rate of \$500 a day and expenses.

21 He said he would have to check this out with
22 Mr. Oztemel, but he was sure that Mr. Oztemel would give
23 Mr. Giffen a go-ahead on that. He also spoke about a period
24 of two weeks.

25 (Continued on page 228.)

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1 || 1 elmch Stern-cross

2 Q Was any of this placed in writing by you at this
3 meeting?

4 A No.

5 Q Was anything ever placed in writing by you with
6 respect to this conversation?

7 A No, it was not.

8 Q Was the agreement between you and Mr. Giffen
9 that you would work for two weeks and that the arrangement
10 would be reviewed at the end of that two-week period?

11 A No.

Q What was the agreement?

13 A At that particular meeting, he was going to check
14 with Mr. Oztemel and he was going to call me.

15 Q Was anything else said at that meeting with
16 Giffen?

17 A Not that I recall.

18 Q There was no further discussion of the overall
19 bid of Satra?

20 A No

21 Q By the way, going back to the meeting with
22 Oztemel, before you left to go and talk to Giffen, was
23 there any discussion of the clients of Satra, who they
24 then represented or had represented in connection with their
25 activities in Russia?

1 2 elmch

Stern-cross

2 A No, there was not.

3 Q In discussing the Kama River project, was there
4 any discussion of potential customers, American companies
5 who might be interested in the project?

6 A At the time they only spoke with me about Mack
7 Truck.

8 Q What did they tell you with respect to Mack
9 Truck's involvement in the Kama River project?

10 A That they would be the prime, and they would manage
11 it all.

12 Q When you say "manage it all," do you mean by that
13 that Mack Truck would act in the nature of a prime contractor
14 and it would subcontract out different parts of the
15 contract? Is that what you mean?

16 A That was my understanding.

17 Q And was there any discussion as to who some of
18 those subcontractors might be?

19 A No, there was not.

20 Q What happened with respect to your compensation
21 arrangement with Satra after the meeting with Giffen?

22 A Giffen did speak with me on the phone a few
23 days thereafter, and said that Mr. Oztemel agreed and we
24 should go ahead for two weeks.

25 Q Do you recall how long that was after your meeting

2 of the 9th?

A Within a week or two, on the outside.

4 Q This came to you in a telephone call from Mr.
5 Giffen?

6 || Yes.

Q Where were you when you got that telephone call?

At Kollsman on Long Island, here.

9 () Is there any reference to that telephone call
10 in your calendar?

11 A No.

12 Q What did Mr. Giffen tell you, as best and as
13 precisely as you now recall?

14 A He had discussed the arrangement with Mr. Oztemel
15 who approved it, and I should go ahead, how soon would I
16 be able to start.

17 Q. Anything else said?

18 A I said I had certain obligations to Kollisman.

19 I would not be able to start full-time; would it be
20 acceptable if I might spend a day or two and then start
21 to fill in in a week or two later?

He assured me that any schedule that was convenient
for me, they would be willing to accept.

24 Q Anything else?

25 A H.O.

1 4 elmch Stern-cross

2 Q Did you ask that Mr. Giffen confirm this agreement
3 in writing?

4 A I did, but perhaps not at that particular time.

5 Q You therupon went to work under this agreement;
6 is that correct?

7 A That's correct.

8 Q How long did you work on the Kama River project,
9 sir?

10 MR. HELLERSTEIN: For whom?

11 Q For Satra.

12 A All in all?

13 Q Yes, sir.

14 A About two and a half months.

15 Q That would be the balance of March -- or, rather,
16 the balance of April, May and June?

17 A No. I only spent maybe a day or two during the
18 rest of April; I had other obligations. And it was
19 basically May, June and perhaps through the middle of July.

20 Q What did you do in April on this one day, if you
21 recall?

22 A I called the man in Washington who arranged for
23 me to meet on Friday the 30th with a Mr. Don Webster.

24 THE COURT: When was this?

25 THE WITNESS: The meeting with Mr. Webster was

1 | 5 elmch Stern-cross

2 April 30th at 11:00 a.m.

3 Q That meeting is reflected in your calendar,
4 isn't it?

5 A Yes.

Q What happened at that meeting, sir?

7 A Mr. Webster discussed the general issue with me,
8 gave me advice as to how I might proceed to explore it
9 actively in Washington, and how such activity should or
10 should not be conducted towards the end of gaining approval
11 by the Government.

A I have to define the characters.

14 Mr. Webster was the chief of staff to Mr.
15 Peterson, who had recently come into the White House as
16 special assistant to the president for international
17 economic affairs. Mr. Webster said that the administration
18 would be interested in seeing how a project such as Kama
19 River might fit into their considerations, the overall
20 expansion of East-West trade.

Since they were considering that as a relation
to his words, other implications about relationships between
the Soviets and the U.S. Towards that end, this high-level
Russian delegation that was coming over, it would be most
advantageous for the White House to learn the response of

1 6 elmch

Stern-cross

2 the captains of American industry as to whether they wanted
3 to do business with the Russians. The White House would also
4 be most anxious to know what the response of certain of the
5 key members of the Congress would be.

6 He alerted me to those who -- they would prefer
7 not to get over-exercised until all the factors were in, so
8 that an overall evaluation could be made. Similarly, he
9 identified the key figures in various agencies of the
10 Government like Defense, State, et cetera, the object being
11 that the White House was interested in formulating a policy
12 and if I were to conduct our exercise in a correct way,
13 it might very well help them get information they would
14 need in order for them to formulate policy.

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Stern-cross

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2 Q Did he give you advice as to what you ought to
3 do?

4 A Yes, sir.

5 Q Did you tell Mr. Webster what your relationship
6 was with Satra?

7 A Yes, sir.

8 Q What did you tell him?

9 A I told him I was consultant to Satra on this
10 particular exercise.

11 Q Did you advise Mr. Webster of Satra's interest in
12 the Kama River project?

13 A Yes.

14 Q Did you tell him it was Satra's understanding
15 that the project was dead, was not going forward?

16 A I advised him that the initial response of the
17 Department of Commerce was no, the U.S. would not allow
18 this.

19 Q Did you tell Mr. Webster when Satra had gotten
20 that advice?

21 A To the best of my knowledge, like a month or so
22 earlier?

23 Q But you have a clear recollection of telling
24 Mr. Webster when Satra had gotten this advice?

25 A To the best of my knowledge.

1 2 hpmch

Stern-cross

2 Q Did you discuss with Mr. Webster the fact that
3 there had been a change?

4 A No.

5 Q Did Mr. Webster tell you that Satra's information
6 was wrong?

7 A No.

8 Q Would you like to add something to that?

9 A Whatever you want.

10 Q What else was said at that meeting, Dr. Stern?

11 A Mr. Webster told me, in effect, that the Commerce
12 Department was the executive agent of the Government in
13 these issues, but on a policy matter as fundamental as
14 detente and expansion of East-West trade, all agencies of
15 the Government were involved and these issues get resolved
16 in the White House and the Commerce Department is asked to
17 carry out the policy of the Government.

18 Q Did he say anything else?

19 A He asked me to keep him advised as to the
20 progress, and specifically he asked there be no publicity
21 associated with the exercise of working with this high-
22 level Russian group in eliciting opinions of various elements
23 mentioned.

24 Q Did you tell him that you were working with this
25 high-level Russian group at this time?

1 3 hpmch

Stern-cross

2 A No.

3 Q Did you tell him anything about Satra participating
4 in the visit of this Russian delegation that was to appear?

5 A Yes.

6 MR. HELLERSTEIN: The question is answered.

7 If your Honor please, there seems to be no relevance, and
8 I object.

9 THE COURT: Objection sustained. The question
10 was answered, but the objection is sustained.

11 Q Do you recall anything else that happened at
12 that meeting?

13 MR. HELLERSTEIN: I object on the same ground.

14 THE COURT: I would like to discuss this with coun-
15 sel at the side bar.

16 (At the side bar.)

17 THE COURT: Just what is your intention with
18 regard to this line of examination prior coming to grips
19 with the contract itself and the history of negotiations?

20 MR. HILL: Mr. Stern is about to testify, I
21 think, when we get to his compensation agreement, that he
22 was renegeed upon, cheated and lied to, and he wasn't paid
23 the money which he had coming.

24 I think it is highly on his credibility and highly
25 relevant on the issue of whether or not he was retained

1 4 hpmch

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2 for his skill in connection with this Kama River project
3 which, by the way, was a failure, he didn't produce what
4 people will testify he was hired to do and he thereafter
5 complained bitterly about his compensation.

6 THE COURT: I am asking how much time you are
7 going to be spending. I understand the theory.

8 MR. HILL: Maybe another ten minutes. I want to
9 take him through the --

10 MR. HELLERSTEIN: None of this was touched on on
11 direct and I --

12 MR. HILL: He described his activities and that
13 is --

14 THE COURT: I think it's close enough. I think,
15 sooner or later, the general subject matter would be
16 opened up, but I do think you should be limited to another
17 ten minutes.

18 (In open court.)

19 Q Is there anything else you remember about your
20 meeting with Webster?

21 A No.

22 Q What did you do thereafter with respect to what
23 had transpired at that meeting?

24 A I immediately advised Satra of what Mr. Webster
25 had advised as guidance to the way their activity should

1 5 hpmch Stern-cross

2 be conducted.

3 Q Who at Satra did you give that advice to?

4 A Giffen.

5 Q What did Mr. Giffen say?

6 A "Great."

7 Q Anything else?

8 A He asked would I continue to work with him in his
9 implementing those recommendations.

10 Q What did you say?

11 A "Sure."

12 Q Did you, in fact, continue in implementing those
13 suggestions?

14 A That's not what I said.

15 THE COURT: Nobody said that is what you said.

16 You said Mr. Giffen asked you if you would work, and --

17 Q Then I asked you if you did, in fact, work.

18 A Yes, I worked.

19 Q And you worked during the month of May?

20 A Yes.

21 Q How many days did you work?

22 MR. HELLERSTEIN: If your Honor please --

23 THE COURT: Sustained. I don't see that it makes
24 any difference how many days he worked.

25 Q Did you expect to be paid for the work you would

1 6 hpmch Stern-cross

2 have done?

3 A Yes.

4 Q How would you get paid, were you supposed to
5 render a bill?

6 A I asked for an agreement in writing.

7 Q Did you keep any record of the days that you
8 worked? You were being paid by the day, weren't you, sir.

9 A Yes.

10 Q Did you keep any record of the days that you
11 worked?

12 A Generally.

13 Q Where did you keep that record?

14 A I have a series of expense accounts.

15 Q Where are they?

16 A Here.

17 Q Do they reflect all the days that you worked?

18 A I would hope so.

19 Q Do you know so?

20 MR. HELLERSTEIN: If your Honor please, this was
21 a matter that was gone over in painstaking detail during
22 pretrial discovery and it was available to Mr. Hill. I
23 can't see a recount of this before the Court and the jury.

24 THE COURT: If you want documents produced, you
25 can have them produced and they will show what they will

3 MR. HILL: I can get it with one answer, your
4 Honor.

5 THE COURT: Apparently Mr. Stern doesn't recall
6 what is in the records. The records are available.

Q Did there come a time, Dr. Stern, when you prepared
a bill for your consulting services?

A Not in that form.

10 THE COURT: I can't go as slowly as the rest
11 of you.

12 Did there come a time when you made demand for
13 request of payment?

14 THE WITNESS: Yes, sir.

15 THE COURT: In what form?

16 THE WITNESS: I asked to be paid for the first
17 couple of weeks of work.

THE COURT: How did you ask, orally or --

19 THE WITNESS: Orally. I asked Mr. Giffen,

20 Q When?

21 A After I had been working for over three weeks,
22 I said, "Let us figure I have worked for you a couple of
23 weeks. I should get paid for that now."

24 Q How much did you tell Mr. Giffen Satra owed you
25 at that time?

1 8 hpmch

Stern-cross

2 A A couple of weeks were -- two weeks -- \$5,000.

3 Q Do you recall asking for \$5,000?

4 A Yes, sir.

5 Q Had you incurred any expenses at that point in
6 time?

7 A Yes, I had.

8 Q Did you give Mr. Giffen a bill for that or did you
9 simply ask him?10 A The expenses I submitted on a regular expense
11 form.

12 Q Was this a Satra expense account form?

13 A Yes.

14 Q Did you give him any piece of paper reflecting
15 the \$5,000?

16 A No, I didn't.

17 Q What did Mr. Giffen say to you when you made this
18 request?19 A He said that he had discussed with Mr. Oztemel,
20 whereas we were working all very hard with the Russians
21 here, they needed my services for another couple of weeks
22 at the same rate.23 Q Did he say anything about whether or not he is
24 going to pay you at that time, at the time of your conver-
25 sation?

1 Q hpmch

Stern-cross

2 A Yes, he said, "After a month, we will then owe
3 you \$10,000."

4 Q This would be on or around the end of May?

5 A Yes.

6 Q Did he then tell you he was going to pay you
7 at the end of the month?

8 A No.

9 Q What did he say?

10 A He said they would owe me \$10,000. We didn't
11 discuss exactly when I would get paid.

12 THE COURT: I can't wait to find out.

13 Did you ever get paid anything?

14 THE WITNESS: Wait until you hear the answer.

15 THE COURT: I am asking you now.

16 Ladies and gentlemen, we can't spend a week
17 finding out these small points.

18 THE WITNESS: I got paid for the first one month's
19 work.

20 Q When did you get paid for that, sir?

21 A August, mid-August.

22 THE COURT: For the work that ended sometime in
23 May, is that it?

24 THE WITNESS: Yes, that's right.

25 Q Between the end of May and time you got paid,

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1 10 hpmch

Stern-cross

2 did you request payment from Satra, and if so, of whom
3 did you make that request?

4 A Yes, sir, I did.

5 Q Of whom did you make that request?

6 A A meeting with Mr. Oztemel and Giffen sometime
7 in mid-July; I announced that before we go any further,
8 I had not only been told that I would get paid for the
9 first month, but Mr. Giffen had told me that they had agreed
10 to extend that a second month, namely, two months at
11 \$10,000 each. Mr. Giffen had confirmed that by telling
12 that to Dr. Proehl who relayed that confirmation to me
13 and I said, "Before we go any further, why don't you fellows
14 first pay up the \$20,000 you owe me?"

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2 Q When did Mr. Giffen tell you that you were going
3 to be retained for the second month:

4 A After I had been working for them for about six
5 weeks.

So that was when, around the end of May?

A No. It was more in the first or second week of
June.

9 Q Where were you when you were told this?

A In New York.

11 9 In the Satra offices?

12 A Yes, sir.

13 Q Was anybody else present when Mr. Giffen told
14 you this?

15 A No. Dr. Proehl related Mr. Giffen had told him.
16 He had had discussion with me, and I was to continue for
17 another month.

18 Q This conversation with Dr. Proehl, where was
19 that, on the West Coast?

20 A Yes.

21 Q Was anybody present when you had that conver-
22 sation?

23 A No.

Q You had been working since the first of May, you
had worked a month, and you continued to work on into June

1 2hpd

Stern-cross

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2 before you had this conversation with Giffen; is that right?

3 A That's right.

4 Q Doctor Stern, at this conversation in July,
5 where Mr. Giffen and Mr. Oztemel were present and you were
6 asked to be paid, would you tell us as best you now recollect
7 what was said at that meeting?8 A Yes. Mr. Oztemel wanted to see if we could work
9 out a permanent relationship and discuss that. I said
10 before we discuss a permanent relationship, let us resolve
11 the past relationship. He said, "Absolutely." I said,
12 "Well, you folks owe me for two months." This conversation,
13 I think, was in the middle of July. Mr. Giffen said he never
14 committed the second month.

15 Q What did you say?

16 A I says, "What the hell do you think I've been
17 doing around here all this time, for nothing?"

18 Q What did Mr. Giffen say to that, if you recall?

19 A He said not a word.

20 Q What did Mr. Oztemel say?

21 A Mr. Oztemel said, "Let's not argue, we'll give
22 you \$10,000 for the first month and rather than argue over
23 the second month, when we're successful on the project, we
24 will give you \$15,000, instead of \$10,000."

25 Q What did you say?

2 A I shrugged my shoulders and said, "I'm at a
3 disadvantage."

4 Q Did you say anything else?

5 A No.

6 Q Did you say anything to Mr. Giffen in particular?

7 A No.

8 Q Did you say anything to Mr. Oztemel in terms of
9 what you thought of Mr. Giffen as a result of this?

10 A Afterwards?

11 Q After that meeting.

12 A Sometime after.

13 Q Do you recall when it was?

14 A It was a while after. I don't know exactly when.

15 Q What did you say?

16 MR. HELLERSTEIN: If your Honor please, the
17 characterization of --

18 THE COURT: Yes, too remote, sustained.

19 MR. HILL: May I approach the bench, your Honor?

20 MR. HELLERSTEIN: If you want to press the
21 question, go ahead. I'm trying to save some time.

22 THE COURT: Gentlemen, I can't decide who is
23 on whose side, so I will exercise my own discretion. It is
24 getting too remote.

25 MR. HILL: May I preserve an exception, your

1 4hpd

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2 Honor?

3 THE COURT: Of course.

4 Q Do you recall anything else that was said at that
5 meeting?

6 A No.

7 Q You had worked for this six-week period?

8 A Yes.

9 Q Did there come a time when the Kama project was
10 abandoned?

11 A Yes.

12 Q When was that?

13 THE COURT: I don't know if the Kama River project
14 itself was abandoned. That would be up to the Russians.
15 You mean after Mack Truck. That was abandoned.

16 THE WITNESS: That's right.

17 Q When was it?

18 A September the 15th, Mack decided not to go along
19 any further.20 Q During the course of the period that you w .
21 on the Kama River project, were export licenses issued as a
22 result of your effort, sir, in connection with the project?

23 A I don't know.

24 Q You don't know?

25 A That's right.

2 Q I think you told us that your first contact with
3 anyone from IBM was in June, when you met with Mr. Thompson,
4 is that correct?

5 A That's right.

6 Q And you reported that conversation back to
7 Mr. Oztemel and was Mr. Giffen there?

8 A Correction. I reported that conversation the
9 following day and I don't believe Mr. Oztemel was there.
10 Mr. Giffen was and Mr. Schloss was.

11 Q And your next conversation with a representative
12 of IBM was with Mr. Jones, some time in July; is that
13 correct?

14 A Yes.

15 Q And your next conversation with a representative
16 of IBM was a telephone conversation on August 6th, with
17 Mr. Stafford?

18 A Yes.

19 THE COURT: With whom?

20 MR. HILL: Mr. Stafford.

21 Q When you had the conversation with Mr. Stafford
22 on the 6th, had you worked out any permanent arrangement
23 with Satra?

24 A No.

25 Q Were you still functioning on your arrangement

2 in connection with the Kama River project?

3 A I was doing other things. I was not doing any-
4 thing with Satra.

5 Q How long prior to August 6th had you stopped
6 working with Satra?

7 A A week or so ago.

8 Q But you were with Satra when you had a conver-
9 sation with Jones?

10 A I'm afraid I don't understand -- you mean --
11 what do you mean, I was with Satra?

12 Q You had a consulting arrangement.

13 A That's correct, and I assumed that since I had
14 been already cheated out of \$10,000, if they ever saw fit
15 to give me the \$15,000 for something that may happen in the
16 future, I would gladly accept it. In that sense I had an
17 arrangement.

18 THE COURT: Let me get this straight. You are
19 all too esoteric for me. There never was an arrangement with
20 Satra in writing with regard to your consulting, is that
21 right?

22 THE WITNESS: That's right, sir.

23 THE COURT: In that sense, when you did something
24 for them, you did it for them.

25 THE WITNESS: That's right.

2 THE COURT: I take it there was no formal act of
3 any kind at the end of July which said now you are no longer
4 a consultant.

5 THE WITNESS: That's right.

6 THE COURT: It's just that you spent less time
7 and sort of drifted.

8 THE WITNESS: That's right.

9 Q You just told the jury that you had been cheated
10 out of \$10,000. Did you ever tell anybody at Satra that
11 you had been cheated out of \$10,000?

12 A.Q. Whom did you tell that to?

13 A Mr. Oztemel, Mr. Hanno Mott, Mr. Sandy Young,
14 Mr. Max Schloss.

15 Q When did you make those statements, sir?

16 A Soon after the time I had been cheated.

17 Q And that was in July?

18 A I guess so.

19 Q Did you tell these fellows who had cheated you,
20 in Satra?

21 A It was difficult for me to understand whether
22 Mr. Giffen had told it alone and Mr. Oztemel was unaware, and
23 this was part of the game, so I reserved judgment.

24 THE COURT: In other words, you didn't name any-
25 body in particular?

2 THE WITNESS: That's right.

3 Q In August you got a call from Mr. Stafford and
4 you then went back to Satra for whom you had not been working,
5 is that correct?

6 MR. HELLERSTEIN: I think the question is a bad
7 one.

8 THE COURT: I will sustain the objection.

9 Q In August you went back to Satra, did you not?

10 MR. HELLERSTEIN: Again, your Honor --

B2 11 THE COURT: Sustained. I think, Mr. Hill, your
12 assumption he went back implies that he left and there was
13 no such clear-cut arrangement as I understand the testimony.
14 He did consult with them again, let's put it that way.
15 That's an appropriately neutral word, the way the testimony
16 is going so far.

17 Q After you spoke to Mr. Stafford, you did call
18 Satra, didn't you?

19 A Yes.

20 Q And you had a meeting with Mr. Oztemel, didn't
21 you?

22 A Yes.

23 Q And what did you tell him at that meeting?

24 A That meeting was with Stafford and Mr. Oztemel.

25 Q And you told us at some length about what

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2 happened at that meeting?

3 A That's right.

4 Q In your conversation with Mr. Stafford, which
5 occurred in the 15-minute period, I think you told us about,
6 before Mr. Oztemel appeared, did you tell Mr. Stafford what
7 your relationship was with Satra?

8 A Yes, sir.

9 Q What did you tell him?

10 A I said I was a technical man, I was not a trader,
11 I was a consultant to Satra on the Kama River project.

12 Q Did you tell him anything else?

13 A About what?

14 Q Your relationship with Satra?

15 A No.

16 Q Did you say anything to Mr. Satra with
17 respect to what your technical qualifications were?

18 THE COURT: You said Mr. Satra.

19 Q I'm sorry. Mr. Stafford, excuse me.

20 A No, other than I had been in technology.

21 THE COURT: That's t-r-a-d-e-r?

22 THE WITNESS: Yes, thank you, sir.

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23 (Continued on page 253.)

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2 Q Anything else?

3 A No, sir.

4 Q At this conversation with Mr. Stafford, was
5 there any reference made by Mr. Stafford in terms of what he
6 was looking for, what IBM was looking for from Satra?7 A This was the first meeting he had, he was
8 rather cautious. He said they were willing to discuss and
9 explore the possibility of getting involved in the Kama
10 River project, perhaps getting involved in trade with the
11 Russians, and perhaps the necessity for introducing in the
12 media.13 Q Did Satra or Mr. Oztemel on behalf of Satra tell
14 Mr. Stafford at this meeting of August 10 that as far as
15 they were concerned, they were going to pursue the Kama
16 River project?17 A They were actively pursuing it and he introduced
18 a magazine article that discussed it.

19 Q That is the Business Week article?

20 A That's right.

21 Q At that point in time a protocol had been signed,
22 hadn't it, by Mack, with the Russians?

23 A Yes, it had.

24 MR. HELLERSTEIN: I think we might define for the
25 jury what we mean by protocol.

2 Q Why don't you tell us what that means to you,
3 Mr. Stern?

4 A In U. S. commercial terms it's an agreement to
5 agree in : general areas that the parties are going to
6 explore whether they can do business together.

7 Q At this meeting on the -- I guess it was on the
8 10th -- did you meet with Mr. Oztemel privately?

9 A That evening we, together with Miss Van Stavern,
10 we got together for dinner.

11 Q One of the subjects of that dinner was the
12 question of your relationship with Satra?

13 A Yes.

14 Q And it was as a result of that, that you
15 prepared this, I think it was Plaintiff's Exhibit A?

16 A I don't understand the question. As a result of
17 what?

18 Q What transpired at that meeting?

19 A Yes, that's right.

20 Q Is it your testimony here that that document
21 represented a complete agreement between you and
22 Mr. Oztemel?

23 A Subject to the filling in of the blanks, it
24 represented our understanding that had been reached the
25 night before.

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2 Q And the open items in that agreement, and
3 correct me if I am wrong, related to the proportions that
4 you would share in fee income generated?

5 A No, sir.

6 Q Were the companies identified, to which this
7 agreement related, or did this relate to all companies?

8 A The companies were not identified. It related
9 to a class of companies.

10 Q They would be companies which were engaged in
11 the field of mass technology products, licenses and services?

12 A That's right.

13 Q What was meant by furnishing services? What
14 kind of companies? Did you have any discussions as to what
15 they were?

16 THE COURT: Would you read the language you are
17 referring to?

18 MR. HILL: Yes. It is in the first paragraph,
19 your Honor.

20 THE COURT: "It is hereby agreed that Doctor
21 Stern and Satra Corporation will use their joint best
22 efforts to consult for and help represent in the Union of
23 Soviet Socialist Republics, U. S. companies in the field of
24 advanced technology products, licenses and services.
25 Companies to be served by this agreement" --

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2 MR. HILL: Covered, I think, your Honor.

3 THE COURT: "Covered, will be designated by" --

4 MR. HILL: "An independent memorandum," I think
5 is what that says.6 THE COURT: That is the part you are asking -
7 about?8 MR. HILL: Yes. Then I am referring particularly
9 to companies engaged in the service business, if that is
10 what that refers to.

11 Q What companies were you talking about, if any?

12 THE COURT: Is the question whether they
13 discussed the specific companies or, if not, what kind of
14 companies were intended by Doctor Stern when he drafted this?15 MR. HILL: I'd ask the second question, your
16 Honor, if he answered the first one by saying no specific
17 companies were discussed.18 A No specific companies were discussed. That is
19 number one.20 Q Was there a class of companies in the service
21 business discussed -- I'm sorry, did I interrupt, your Honor?22 THE COURT: We are both asking the same thing.
23 What did you mean when you referred to service companies, here?

24 THE WITNESS: May I answer?

25 THE COURT: Please.

2 THE WITNESS: The definition of an industrialized
3 society is one where industry is the majority over farming
4 and agriculture. The definition of a superindustrialized
5 society is now one where the service industries begin to
6 dominate over the production of hardware itself.

7 So, associated with the introduction of
8 technological products, the know-how to use those, that I
9 consider a service industry, and that has become multi-
10 billion dollar here in the U.S. It has not yet become that
11 size in the Soviet.

12 Q Did you discuss with Mr. Oztemel the introduction
13 of these companies into the Soviet Union?

14 A Yes.

15 THE COURT: Could you give us an example of the
16 company like one you are talking about?

17 THE WITNESS: Reservation systems.

18 Q You mean airlines reservation systems?

19 A That's right.

20 Q Anything else that you can think of?

21 A I could go on for an hour, but I don't know if I
22 am helping, you know.

23 THE COURT: Not if you go on for an hour, you
24 aren't. If you have one or two more examples, fine.

25 THE WITNESS: (No response.)

2 THE COURT: May I ask, for example, if you consider the services performed by a company like IBM in
3 installing equipment or teaching people how to use it as
4 part of the services, as distinct from the manufacturing?

5 THE WITNESS: The major business of IBM is
6 hardware. But it is interesting to watch the progress of
7 IBM, the share of revenues that come from non-hardware is
8 going up. That is the service end of their business.

9 Q You had a meeting with IBM that day. Did you
10 discuss that aspect of IBM's business with Mr. Oztemel?

11 A No.

12 Q Let's get back to Plaintiff's Exhibit A which
13 you tell us reflects the entire agreement between you and
14 Mr. Oztemel for the client.

15 MR. HELLERSTEIN: I object to the question.
16 That is not a correct summary of what Doctor Stern said.

17 Q What did the agreement reflect?

18 THE COURT: I think he testified that this
19 Exhibit A except for the blanks, is intended to embody the
20 understanding reached at the dinner meeting of August 10th;
21 is that correct?

22 THE WITNESS: Yes.

23 MR. HILL: That is my recollection of it as well.

24 Q Did you have any discussion with respect to the

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2 subject matter covered by these blanks which related to dates
3 and the fee, the monthly fee to be paid?

4 THE COURT: You mean, did he have any discussion--

5 MR. HILL: At the meeting.

6 THE COURT: Of August 10th.

7 MR. HILL: Yes, your Honor.

8 THE COURT: Before he drafted this.

9 MR. HILL: Yes, your Honor.

10 A Yes.

11 Q What was that discussion?

12 A We discussed the fact that my family and I have
13 come to a firm decision we are not going to relocate the
14 kids and things like that. So that I would have a heavy
15 expense travelling back and forth. I would have an apartment
16 here, and those would be expensive. We discussed that I
17 would need some reasonable salary over and above those kind
18 of expenses.

19 That's about the extent.

20 Q The blank in the agreement of paragraph 3, I
21 take it the first blank relates to a date. Was there any
22 discussion as to what that date ought to be, at this meeting
23 on the 10th?

24 A Not specifically.

25 Q Generally?

2 A Yes.

3 Q What was the discussion?

4 A We were speaking like a year.

5 Q What about the dollar figure? Was there any
6 discussion of that?

7 A None other than what I have just said.

8 Q This agreement was prepared by you at the
9 Satra offices subsequent to the dinner of August 10th, is
10 that correct?

11 A Yes, it is.

12 Q You delivered this to whom?

13 A I showed it to Bette, to make sure I understood
14 what happened, and she said this was her understanding. And the
15 I showed it and delivered it to Mr. Oztemel.

16 Q What did he say when you gave it to him?

17 A He said yes, this is what we discussed; this is
18 what we have agreed on. He would like to take it with him
19 to study the words and what numbers should go in there.

20 Q Did he say anything else with respect to what
21 he wanted to examine in connection with this agreement?

22 A No, sir.

23 Q I think, and you correct me if I am wrong, that
24 in your direct you referred to the fact that there had been
25 difficulties, the context of your testimony with respect to

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2 this document, Plaintiff's Exhibit A, you said that there
3 had been difficulties in the past. To what difficulties
4 were you referring?

5 THE COURT: Perhaps the witness understands, but
6 I don't, and maybe the jury doesn't. Difficulties when,
7 about what?

8 MR. HILL: I think Doctor Stern testified, and
9 I am sure that either Doctor Stern or Mr. Hellerstein will
10 correct me if I'm in error, your Honor, but I believe he
11 testified that he referred in his meeting with Mr. Oztemel
12 on August 10 to the difficulties that he had in the past.

13 THE COURT: I see.

14 (Continued on page 262.)

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2 Q Is that correct, sir, that you did so testify?

3 A That's right.

4 Q I am now asking you to what difficulties
5 you were referred?

6 A They were the following:

7 Mr. Giffen had lied about the extension of the
8 \$10,000 for a second month, so I was dealing with him
9 at arm's length.10 Next, from an organizational point of view,
11 Mr. Oztemel indicated he'd have difficulties as to where
12 within his organization I would fit relative to other
13 elements;14 And the third, my need for expenses and salary
15 could be out of line with the rest of his organization
16 and he didn't want to shake them up.17 Q Did you have a discussion with Mr. Oztemel
18 with respect to becoming an actual employee of Satra at
19 this time?

20 A Earlier than this.

21 Q Was this in connection with the Kama River
22 exercise? And I say that simply to relate it to your
23 original retainer.

24 A No, it was not.

25 Q When was it discussed prior to August 10th?

1 2 elmch Stern-cross

2 A Some weeks earlier, Mr. Oztemel made an effort
3 to negotiate an arrangement whereby I would come and work
4 for Satra.

5 Q Was that before or after you had had the discussion
6 with respect to the monies due you in connection with you --
7 what I will refer to as your original retainer arrangements
8 with Satra?

9 A I am really not sure.

10 Q Do you have any record of that conversation?

11 A No.

12 Q What was the conversation?

13 A Mr. Oztemel said wouldn't I move east for a
14 hundred thousand dollars a year.

15 Q What did you say to that, sir?

16 A I explained that we had reached a family decision
17 to stop moving the family around so much. My kids were
18 in school, they liked it, they were doing academically well,
19 and there are things other than money. So I was not
20 excited about moving east, even for a hundred thousand
21 dollars a year.

22 Q Was anybody else present when you had this conver-
23 sation?

24 A No.

25 Q Let's go back to what Mr. Oztemel told you when

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Stern-cross

2 you showed him Plaintiff's Exhibit A, that is, the agreement
3 you prepared after your August 10th dinner.

4 Did M. Oztemel tell you that he wanted to consider
5 any of the other terms of this agreement, other than the
6 blanks?

7 A No, sir.

8 Q Did he say, in words or substance, that this was
9 completely satisfactory to him?

10 A Yes, sir, except he wanted to examine the words
11 and decide on the offers for the blanks.

12 Q Did he advise you that he was going to show this
13 document to anyone within the Satra organization?

14 A No, sir.

15 Q Had you become aware of an institution in Satra
16 referred to as the executive committee, within this period
17 of time?

18 A I believe so.

19 Q But, as far as you now recollect, there was no
20 reference by Mr. Oztemel when you gave him this document
21 to the executive committee?

22 A No reference.

23 THE COURT: You may give it or would give it?

24 Q That he would give it, I'm sorry.

25 A He did not say that.

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Stern-cross

2 Q Do you know whether he ever showed this document
3 to the executive committee?

4 A No, I do not.

5 Q When did you next have a conversation with Mr.
6 Oztomel about Plaintiff's Exhibit A?

7 A When we were walking back from the IBM meeting
8 on August the 24th.

9 Q You had had no conversations with Mr. Oztomel
10 between the time you gave him this document, which, I take
11 it, was sometime around August 13th, and August 24th; is
12 that right?

13 A He went to Moscow, like August 13th or 14th,
14 something like that, and he didn't get back -- as a matter
15 of fact, if you remember, I got the call to set up the meeting
16 because he was in Moscow.

17 So the answer is no.

18 Q Thank you.

19 A All right.

20 Q Did you talk about this document to anybody in
21 the Satra organization during this period between August 13th
22 and August 24th, other than the conversation that you related
23 that you had with Mr. Ozteomel's secretary and your conver-
24 sation with Mr. Oztomel himself?

25 A Only for assistance in composing it. I asked to

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2 see some other model.

3 Q Who did you make that request of?

4 A To two gentlemen, a Mr. Carl Longley and a Mr.
5 Frank Orban.

6 Q Orban is the fellow who introduced you to
7 Ambassador Thompson?

8 A Correct.

9 Q Who is Mr. Longley?

10 A He is an employee of Satra.

11 Q By the way, at the time you had this conversation
12 on August 10th, do you have any idea how many employees
13 Satra had at that time?

14 A I was able to get a rough idea of the count within
15 the New York offices; that's all.

16 Q Do you know what the makeup of the personnel
17 was? Do you know how many lawyers, for example, Satra
18 employed on the premises?

19 MR. HELLERSTEIN: Functioning as lawyers, or who
20 happened to have law degrees?

MR. HELLERSTEIN: I object to the question.

23 THE COURT: I think it's irrelevant. You bring
24 it out through your own witnesses. Is his knowledge of
25 that important?

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Stern-cross

2 MR. HILL: It is to me, yes, sir.

3 THE COURT: Then it's either yes or no.

4 A I spoke to Mr. Orban because he had a law degree
5 but wasn't working as a lawyer. I spoke to Mr. Longley --

6 THE COURT: I don't think that is the question, -
7 why you spoke to them. The question is whether you knew
8 how many people were working for Satra and the subsidiary
9 question is how many of them might have been lawyers,
10 if you knew.

11 A If you define the words "might have been lawyers,"
12 I'm not sure I know what you mean. Did they have a law
13 degree? Did they work as lawyers? I don't understand it.

14 Q Let me withdraw the question.

15 A Thank you.

16 Q And put the question to you this way: Other
17 than clerical help, Dr. Stern, do you know what the makeup
18 of the Satra staff was at the executive or semi-executive
19 level, in terms of the capabilities of the people employed?

20 A I had my own impression, and I gained certain
21 understandings. That's all I can answer.

22 Q What was your understanding of the staff at
23 Satra?

24 MR. HELLERSTEIN: If your Honor please, I don't
25 understand the question.

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2 THE COURT: I will sustain the objection.

3 Q Do you know how many engineers were employed
4 by Satra?

5 A No, I did not know.

6 Q Do you know how many accountants they had?

7 A No, I did not know.

8 Q Do you know how many people who had law degrees?

9 A I could have estimated how many. I couldn't
10 have been sure.

11 Q Was it two, three, four, five?

12 THE COURT: What is your estimate?

13 A Three, or perhaps four.

14 Q You knew in August that Satra had an office in
15 Moscow, didn't you?16 A I knew in August that Satra used an office in
17 Moscow.18 Q Do you know that Satra had people on the payroll
19 in Moscow?

20 THE COURT: You mean permanently located there?

21 MR. HILL: People on the Satra payroll in Moscow,
22 yes, more or less on the permanent payroll.

23 THE COURT: Not going there now and then?

24 A That situation was very confused in my mind.

25 Q So you are unsure as to what your knowledge was?

1 8 elmch

Stern-cross

2 A I'm sure that my knowledge was confused as regards
3 that issue.

4 O How about your knowledge with respect to what was
5 the situation in the London office?

6 MR. HELLERSTEIN: If your Honor please, I think
7 all things must come to an end.

8 THE COURT: Sustained.

9 Well, I don't know whether all things must come
10 to an end. I don't want to rule that all things must come
11 to an end. If you want to ask a general question about
12 the degree of knowledge that the Doctor had of the
13 personnel and locations of Satra, all right. But this is
14 so peripheral that I don't think it's justified to spend
15 so much time as to his knowledge of each particular
16 location.

17 Can you tell us what your general knowledge was
18 of the operations of Satra in terms of locations and
19 personnel?

20 THE WITNESS: Yes, sir. I had met with Mr.
21 J. W. Scott from London --

22 THE COURT: Don't tell us how you knew it, just
23 what you knew.

24 THE WITNESS: I'm sorry. I knew him. I could
25 only assume there were some other behind him back at London,

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2 that's all.

3 Q Let's go back to the 24th --

4 THE COURT: Before we start a new subject,
5 let's take our afternoon recess.

6 (The jury left the courtroom.)

7 (Recess.)

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Stern-cross

2 (In open court; jury present.)

3 M A R V I N S T E R N , resumed.

4 CROSS-EXAMINATION CONTINUED

5 BY MR. HILL:

6 Q Dr. Stern, let's move on to August 24th. One
7 question before we talk about August 24th, Dr. Stern.8 You referred to Dr. Proehl on a number of
9 occasions. Do you know if he is still employed by Satra?

10 A I do not know.

11 Q Your conversation with respect to Plaintiff's A,
12 that's the August 13th document, it was at that conversation
13 you asked Mr. Oztomel why you didn't finish the agreement?

14 A Why do we not finish the agreement.

15 Q What did he say then?

16 A He said the agreement had been reviewed by his
17 executive committee and was turned down in this form and
18 we have to renegotiate.

19 Q What did you say?

20 A I said I thought we had an agreement.

21 Q Did you say anything else?

22 A No, other than the fact that we were going back
23 to meet with his executive committee to discuss it.24 Q By the way, Dr. Stern, before August 24th, did
25 you discuss that agreement with a lawyer? When I say "that

1 ||| 2 hpmch Stern-cross

2 agreement," I am talking about the one that is dated
3 August 13th.

4 MR. HELLERSTEIN: Objection, your Honor. I
5 don't think it has any relevancy.

THE COURT: Sustained.

7 Q Did you discuss it with your wife?

8 MR. HELLERSTEIN: Again, I object.

9 THE COURT: Sustained.
10 MR. HILL: I wonder if I may be heard, your
11 Honor.

12 (At the side bar.)

13 MR. HILL: Your Honor, this witness made a great
14 point on his direct of the fact that on, I believe it was
15 August the 24th, he asked if he could or should discuss
16 the agreement put to him with a lawyer, and he was told that
17 he didn't need a lawyer.

18 It seems to me that answer is directed at
19 demonstrating that in some fashion he has been overreached.

20 THE COURT: I don't think he is claiming he was
21 overreached. You are claiming you were overreached.
22 If that's the basis for your pressing the point, the objection
23 is still sustained.

24 MR. HILL: Your Honor, I must take an exception
25 on the record and I would ask to be permitted to make an

1 3 hpmch Stern-cross
2 offer of proof. As a matter of fact, he testified on
3 direct examination that he discussed this, I believe, with
4 Mr. Cohen. He is the one who opened the door.

5 THE COURT: You will have to show me the testimony
6 you are referring to and I don't think there is any
7 point taking time for that now. If the testimony supports
8 such a question, I will reconsider my ruling.

9 (In open court.)

10 Ω Let's go back again to the 24th, Dr. Stern.

11 A Yes.

12 Q You were told that the agreement had not been
13 approved by the executive committee, is that correct?

14 A That's correct.

Q And you said to Mr. Oztemel you thought you had
a deal. Did you say anything else to him?

17 A I don't recall. Again, he had offered we go back
18 and we resolve this, so there was nothing to say until we
19 got back.

20 Q And this conversation with respect to your
21 agreement, did that continue after you got back to the
22 office?

23 A Yes, sir.

24 Q Would you tell us what that conversation was?

25 A lie convened Mr. Hanno Mott, his attorney, Mr.

1 || 4 hpmch Stern-cross

2 Hermann, his accountant, Mr. Schloss, the treasurer,
3 and he said we will discuss.

I said, "If we're going to have all of your attorney, your accountant, the treasurer here, I think I ought to have a lawyer here also." That was denied.
I was told I don't need a lawyer.

8 Q You were told that you didn't need a lawyer?

9 A Correct.

10 Q Did you say anything at that time, at this meeting,
11 in words or substance, that you had already consulted a
12 lawyer?

13 A No, sir.

14 MR. HILL: Your Honor, I am going to ask the
15 same question in this context, your Honor, that I asked
16 before, and that is, had he, in fact, ever consulted a
17 lawyer, and I will observe your Honor's ruling, but --

18 THE COURT: Yes, I continue to feel as I did,
19 Mr. Hill. There is no connection with the context that
20 you referred to.

21 I sustain the objection again.

22 Q What else happened, Dr. Stern?

23 A There was a lengthy discussion which ended up
24 with Mr. Oztemel summarizing the following: There is
25 always eligible a 50-50 partnership, but he would not finance

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Stern-cross

2 it. If he would finance me, he would be willing to finance
3 by \$7,500 a month for a year, but I would take a lower
4 percentage of profits out of the joint venture.

5 In particular, relative to Stromberg-Carlson
6 and IBM, that low percentage would be 25 percent.

7 Q Anything else?

8 A He directed Hanno to put that into an agreement
9 for me to take, and he urged me to see whether I could not
10 get independent financing so that I would be able to
11 accept the pure 50-50 joint venture.

12 Q Then what happened?

13 A I went home to California, and I counseled on it
14 with my wife, with Dr. Proehl, and a friend of Dr. Proehl's,
15 a personal friend of mine, who is a lawyer.

16 Q James Cohen?

17 A Yes, sir.

18 Q Was that the first time you counseled with Mr.
19 Cohen?

20 A I believe so.

21 Q Did you have a document with you when you went
22 back to California?

23 A Yes, sir.

24 Q Was that Plaintiff's Exhibit B, which is the letter
25 dated August 25th, on the letterhead of Satra Corporation?

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1 Sa hpnach Stern-cross

2 A Yes, sir.

3 Q Is it your testimony that that document was
4 prepared by Mr. Hanno Mott?

5 A It was typed by Bette.

6 It was my understanding that the original of
7 August the 11th, or what-have-you, was used as the basis,
8 and that Mr. Mott suggested the final form.

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2 Q So I understand what you are saying to me, are
3 you saying to me Plaintiff's Exhibit B, the letter dated
4 August 25th, had as its model the document you prepared in
5 early August, the one dated August 13th, Plaintiff's A?

6 A I believe so.

7 Q You have the document in front of you?

8 A Yes.

9 THE COURT: Are you telling this on the basis
10 of having read those and coming to that conclusion?

11 THE WITNESS: That's right.

12 Q You have read both of these documents?

13 A Yes, sir.

14 Q You read them in connection with preparing with
15 this trial?

16 A Yes.

17 Q Let me show you Plaintiff's Exhibit S, which is
18 also the letter of August 25th, which contains some pen and
19 ink writings on it and ask you if you can tell me who placed
20 those writings on them?

21 A No, sir, I don't recognize that writing.

22 Q In your conversations, Doctor Stern, with
23 Mr. Oztemel, on the 24th, was an agreement reached by you and
24 Mr. Oztemel with respect to your arrangements with Satra?

25 A No. I was to go and decide which agreement

2 should be reached. But, this was a firm offer.

3 Q In your conversation with Mr. Oztemel on the
4 24th, did you say to Mr. Oztemel in words or substance that
5 he had reneged on the agreement reached as reflected in the
6 document dated August 13?

7 A I did not use those words on the 24th.

8 Q Did you use them on the 25th?

9 A No.

10 Q Going back for a minute to the agreement of
11 August 13th, was there an open question with respect to that
12 agreement on how you were to be financed?

13 THE COURT: Does the question mean was there an
14 open question on August 10th?

15 MR. HILL: Yes, your Honor, and one of the
16 questions, one of the issues Doctor Stern has testified to,
17 repeatedly, was the problem he had with respect to financing
18 his activity, and what I am asking him is, was that specific
19 issue open with respect to the August 13th contract.

20 A The fact that I was to be financed was not open.
21 The amount of financing and the ratio, that's what's open
22 here.

23 Q When you prepared the document on or about the
24 13th of August, were you in a position to finance yourself?

25 A I don't understand the question, I'm sorry.

2 That's ambiguous.

3 MR. HILL: I withdraw it.

4 Q Did your ability to finance the activities, the
5 activities you were expected to perform under that contract,
6 that depended, did it not, on how much you were to be paid
7 under that agreement?

8 MR. HELLERSTEIN: If your Honor please, Doctor
9 Stern's ability to finance is not in issue. What is in
10 issue is his willingness to finance himself.

11 THE COURT: Will you read back the last question.

12 MR. HILL: I withdraw it.

13 Q On the night of the 25th, is this when you left
14 Satra to go back to the Coast?

15 A I believe so.

16 Q Did you have an agreement when you left with
17 Mr. Oztemel?

18 A I don't know the legal definition of an agreement.
19 What we had was the following, He said if I could finance
20 myself, we would share equally 50-50. Otherwise, I would
21 operate under that agreement, which was a firm offer,
22 \$7,500 a month for a year, and I would receive 25 percent
23 of the revenues from either IBM or Stromberg. That was very
24 firm.

25 THE COURT: It is not your contention, is it,

2 THE COURT: We are asking about paragraph 6.

3 THE WITNESS: Yes, sir, I understand. Well, I
4 was offered 25 percent in IBM and Stromberg. If I were to
5 accept that, then we would put together an agreement which
6 covered that particular situation under the umbrella which
7 is offered here. That was my understanding.

8 Q And that is all paragraph 6 related?

9 THE COURT: In your mind.

10 Q In your mind, as you would see it.

11 A In my mind.

12 Q Did you see Mr. Oztemel on the 25th?

13 A Yes, sir.

14 Q Did you talk about Plaintiff's Exhibit B?

15 A Yes, sir.

16 Q What did you say?

17 A We were each going out, Mr. Hanno Mott,
18 Mr. Oztemel went out either by cab or chauffeured car, he was
19 going to LaGuardia, I was going to Kennedy. He said, "We're
20 really coming near to an agreement." He urged if I could
21 get independent financing so we would share 50-50. Without
22 any financing necessitated by him, by him, by virtue of this
23 exhibit, it would be much easier on him and he urged me to
24 please look for that.

25 Q Did anything else happen on the 25th?

2 A I said goodbye.

3 Q Did you have any conversations with Mr. Giffen
4 on either the 24th or the 25th?

5 A No, sir, not that I can recall. He was left out
6 as far as I was involved.

7 Q And you went back to Los Angeles?

8 A Yes, sir.

9 Q You testified you counseled with various people
10 as to which of those two alternatives you were going to
11 suggest or accept.

12 A That's right.

13 Q And at that point you didn't have an agreement.

14 A At that point, I felt I had a firm offer.

15 Q You had two offers.

16 A Yes.

17 Q In the alternative?

18 A Yes.

19 Q You came back --

20 THE COURT: You had the option to choose between
21 those alternatives?

22 THE WITNESS: Yes, sir.

23 Q And you came back on or about the 30th of August,
24 is that right, for the meetings with IBM, is that correct?

25 A You have added some things, but, yes, I was back

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2 in New York for a variety of meetings. I was in New York
3 on the 31st.

4 Q Let me ask you this, Doctor Stern. Up to
5 August 30th, as far as you know, had Satra Corporation
6 received as much as one dollar as a result of your efforts -
7 on its behalf, if you know?

8 MR. HELLERSTEIN: Objection, your Honor. His
9 understanding is not important. Satra made millions without
10 Doctor Stern knowing it.

11 THE COURT: I will sustain the objection.

12 Q What happened on August 30th, if anything, with
13 respect to these employment arrangements?

14 THE COURT: August 30th?

15 MR. HILL: August 30th, yes.

16 A I am not sure if the discussions with Mr. Mott
17 and Mr. Hermann were on the 30th or early on the 31st.

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18 (Continued on page 282.)

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2 Q Well, whenever they were, what were they?

3 A Right --

4 THE COURT: They were with Mott and Hermann?

5 THE WITNESS: And Hermann. They convened a
6 meeting with me. They said that the executive committee
7 wanted them to raise with me certain modifications to the
8 agreement.

9 Q Which agreement, sir?

10 A The agreement that I had entered into with
11 Mr. Oztemel by phone on August the 28th and the 29th.

12 Q What were the terms of that agreement, as you
13 recall them?

14 A That was rather than finance myself I would
15 accept the \$7,500 a month for one year and only the 25
16 percent of the revenues received from IBM and Stromberg
17 Carlson.

18 Q Is that the agreement reflected in Plaintiff's
19 Exhibit B that you left with on the 25th, other than the
20 percents?

21 MR. HELLERSTEIN: If your Honor please, that
22 document --

23 THE COURT: Sustained. The document does speak
24 for itself.

25 MR. HELLERSTEIN: Furthermore, it was a firm

2 offer, according to his testimony.

3 Q Had you on August 28th accepted the offer as
4 you described contained in Plaintiff's Exhibit B?

5 A Together with the specification of those --

6 Q On the percentages.

7 A Sharing, yes.

8 THE COURT: And the companies.

9 THE WITNESS: And the companies, that's right.

10 Q What modifications did these two gentlemen tell
11 you that they wanted, Mr. Mott and Mr. Hermann?

12 A They go the following way --

13 THE COURT: Just tell us what modifications they
14 asked for, please.

15 A All right. They said that associated with
16 clients making sales, that Satra would incur certain
17 expenses for which they felt it was only equitable that
18 Satra be reimbursed.

19 I said, if you are speaking about reimbursement
20 of actual expenses, this means I am going to have to audit
21 the books. They immediately responded, no, no auditing of
22 the books.

23 So I said, then what are you speaking about.
24 They said in lieu of actuals which would necessitate an
25 audit, they said, we want to get an agreement on a rearranged

2 expense reimbursement schedule which would be a function of
3 revenues, rather than actual expenses.

4 0 And what happened then?

5 A We then went, discussed what they had in mind,
6
and I think I have given you a very good explanation of it -
7
here the other day, and I notice that on the blackboard
8
over there.

9 Q Yes. I'd like to ask you about that, Doctor
10 Stern, just so I understand it, because I don't think I
11 quite followed it very much.

12 Is it your understanding of that schedule and
13 that chart that if Satra spent a million dollars attempting
14 to develop the business covered by your agreement in year
15 one and realized no income, that you had no obligation to
16 defray any of those costs; is that correct?

17 A My understanding was --

18 MR. HILL: Could I have an answer to my
19 question, your Honor?

20 MR. HELLERSTEIN: Your Honor, the question is
21 an improper one.

22 THE COURT: You asked him what his understanding
23 was, and he is telling you what his understanding was.
24 Please tell what your understanding was.

25 MR. HELLERSTEIN: Mr. Hill has mixed up two

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2 different things, actual expenses and arbitrary expenses.

3 THE COURT: He has a perfect right to ask him
4 what he understands the situation to be.

5 MR. HILL: And that is all I am asking.

6 A Specifically when they spoke about reimbursement
7 of --8 THE COURT: Doctor Stern, you were simply asked
9 the question, is it your understanding that if in the first
10 year Satra paid a million dollars but received no income,
11 is it your understanding you would have no obligation to do
12 anything about expenses, and the answer to that is --

13 THE WITNESS: Yes.

14 THE COURT: That is your understanding?

15 THE WITNESS: That is my understanding.

16 MR. HILL: That's all I wanted to know.

17 Q If in the second year Satra spent an additional
18 million dollars attempting to develop this business and
19 received no income, would you have any responsibility for
20 the million dollars spent in the second year?

21 A No.

22 Q And you wouldn't have any responsibility for the
23 million dollars spent in the first year; is that right?

24 A Right.

25 THE COURT: I think you made your point.

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2 MR. HILL: May I just go on --

3 THE COURT: Don't go on to the third, fourth or
4 fifth year.

5 MR. HILL: May I just finish it off?

6 THE COURT: Yes.

7 Q If we have a million dollars a year for five
8 years, and in the fifth year Satra realized gross revenues
9 of \$4,000,000, as you understand the contract, what were
10 you entitled to?11 MR. HELLERSTEIN: If your Honor please, the
12 question --13 THE COURT: I sustain the objection, because I
14 find it to be nothing but a duplication of the earlier
15 questions.16 MR. HILL: Your Honor, please. I respectfully
17 disagree with you. May I approach the bench, because I
18 think --19 THE COURT: It is perfectly clear that the
20 witness' testimony is that his understanding of the agreement
21 was that expenses were only to be paid out of revenues, I
22 mean, chargeable to --23 THE WITNESS: According to a preassigned reimburse-
24 ment schedule, instead of actuals --

25 Q I can hear you, Doctor.

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2 A Thank you.

3 THE COURT: Don't scream, Doctor, and don't use
4 sarcasm.

5 THE WITNESS: I'm sorry.

6 THE COURT: But I do agree that you have made -
7 your position clear and there is no need to ask an additional
8 question which in my opinion doesn't add to the jury's
9 understanding as to what the agreement was.10 MR. HILL: Your Honor, may I reserve on this
11 until I examine the records, because I may request that I
12 be permitted to pursue that further?

13 THE COURT: Of course.

14 Q This conversation with respect to the expense
15 schedule, Doctor Stern, did that follow a conversation with
16 Messrs. Mott and Hermann, that Mr. Oztemel was a part of?17 A I don't understand what you are asking; I'm
18 sorry.19 Q Was Mr. Oztemel present at any time during the
20 course of your discussions with Messrs. Mott and Hermann?

21 A No, sir.

22 MR. HILL: I wonder, Mr. Hellerstein, if you'd
23 show the witness pages 93 and 94 of his testimony of yester-
24 day.

25 MR. HELLERSTEIN: It is your examination, Mr. Hill.

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2 MR. HILL: I am sorry to impose.

3 THE COURT: 93 and 94?

4 MR. HILL: Yes : (handing).

5 THE WITNESS: Go ahead.

6 Q Have you read pages 93 and 94?

7 A Go ahead.

8 Q I wish you'd answer the question.

9 THE COURT: Have you read them?

10 THE WITNESS: Yes.

11 Q Let me ask the question again: was
12 Mr. Oztemel present at any time during the course of your
13 conversation with Mr. Mott and Mr. Hermann, and would you
14 please give me a yes or no answer, if you can, sir?

15 A Yes, in the afternoon one; not in the morning
16 one we were speaking of before.

17 Q Okay. Mr. Mott and Mr. Hermann were present
18 when you told Mr. Oztemel that he reneged, weren't they?

19 A In the afternoon, yes, sir.

20 (Continued on page 289.)

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2 Q On Pages 93 and 94, did you tell me -- did you
3 tell your counsel that one meeting had taken place in
4 the morning and there was a further meeting in the afternoon?
5 And can you answer that yes or no, sir?

6 MR. HELLERSTEIN: I object, your Honor. This
7 witness is not to be an expert on his own transcript.

8 THE COURT: In any event, I don't know that the
9 question was asked whether the meeting took place in the
10 morning or afternoon, so I won't require a yes or no
11 answer.

12 MR. HILL: Withdrawn.

13 Q Let me ask you this, Dr. Stern:

14 What did Mr. Oztomel do or say when you told him
15 he was a cheat?

16 A He didn't say anything.

17 Q What did he do?

18 A He flushed.

19 Q And that was the end of it? Nothing further
20 was done or said, is that right?

21 A We were to go back and discuss it with
22 the executive committee.

23 Q Mr. Mott and Mr. Hermann weren't there when you
24 called him a cheat, were they?

25 A No. This was while we were walking back from the

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2 IBM session, very late in the afternoon.

3 Q Was it after that that you had the meeting with
4 Mott and Hermann?

5 A Which meeting with Mott and Hermann?

6 Q Where you told Mr. Oztomel that he had reneged.

7 A Yes, sir.

8 Q That was after he came back, right?

9 A Yes, sir.

10 Q What did Mr. Oztomel do when you told him that
11 he had reneged, and Mr. Mott and Mr. Hermann were present?12 A He referred the matter to the executive committee
13 so we should work out an agreement now so that there
14 are no longer any misunderstandings.15 Q Did he say, in words or substance, that he had
16 not in fact reneged?

17 A He hid behind his executive committee.

18 THE COURT: Did he say in words --

19 THE WITNESS: He said it was the committee and not
20 himself.21 Q Did he say that, so I understand this, did he say
22 to you that it was the executive committee that had
23 "reneged"?24 A That wouldn't accept the agreement. That is what
25 he said.

2 Q Did he say anything else?

3 A Well, there then ensued this lengthy discussion
4 of a new agreement.

5 Q Didn't you tell him that he owned 80 percent of
6 the company and that his reference to the executive
7 committee was something that didn't need to be done, because
8 he controlled the company?

9 MR. HELLERSTEIN: I object to the form of the
10 question. What Dr. Stern didn't tell him is not important.
11 What he did tell him is important.

12 THE COURT: Didn't he tell him the following,
13 meaning "Isn't this what you did tell him."

14 MR. HILL: That is exactly the way I phrased
15 the question, your Honor. He has yesterday's testimony
16 in front of him.

17 THE COURT: Overruled.

18 Didn't you tell him in substance that he controlled
19 the situation?

20 THE WITNESS: Yes, sir.

21 Q What did he say to that?

22 A Nothing.

23 Q Did he flush?

24 A Not at that.

25 Q Did he flush when you told him he had reneged?

2 A I am not sure.

3 Q This meeting on the 30th at IBM, that was a meeting
4 at Mr. Witham's office?

5 A Correction. I have it as of the 31st.

6 Q On the 31st?

7 A Yes.

8 Q This meeting occurred prior to these discussions
9 we have just been talking about, on the way back from that
10 meeting, and at the Satra offices; right?

11 A Yes.

12 Q When you went to Witham's office did you have
13 by that time -- had you reached an agreement with Mr.
14 Oztemel with respect to your compensation, your agreement?

15 A Yes.

16 Q Could I have a yes or no answer?

17 A Yes.

18 MR. HELLERSTEIN: He just gave it to you.

19 THE COURT: I'm sorry. I know what the answer
20 was.

21 Would you read back the last question?

22 (Question read.)

23 MR. HILL: Counsel, if you would like to do it,
24 or I would do it, would you show the witness his deposition,
25 Page 401, from which I am going to read? I am going to

2 read one question and answer, your Honor, but if the
3 witness needs it --

4 THE COURT: Just furnish him with a copy of it.

5 (Pause.)

6 MR. HELLERSTEIN: Your Honor, may the jury be
7 instructed as to what depositions are?

8 THE COURT: Yes, I will be glad to.

9 Ladies and gentlemen, in preparing for trial,
10 the law permits both parties to take the testimony of
11 witnesses in advance, just as it is being taken here in
12 Court, so that the parties can prepare adequately and will
13 gain knowledge of the facts.

14 In this case, there is no dispute about the fact
15 that the defendants took Dr. Stern's deposition. I assume
16 that the examination was conducted on the whole by Mr.
17 Hill or his --

18 MR. HILL: Conducted by Mr. Appel, my associate,
19 your Honor.

20 THE COURT: And some questions may have been
21 asked by Mr. Hellerstein.

22 Mr. Hill is about to refer to that deposition
23 as a basis for asking further questions of Dr. Stern.

24 Q Dr. Stern, you do recall your deposition being
25 taken?

2 A Yes, sir.

3 Q I refer you to Page 401 and I am going to ask
4 you this question: Do you recall being asked the following
5 question, starting at Line 10:

6 "Q In other words, by the time that you went to the
7 meeting at Mr. Witham's office no agreement had been
8 reached with respect to your compensation by Satra?

9 A That's correct."

10 Do you recall being asked that question and giving
11 that answer?

12 A Absolutely. In reference to the discussion with
13 Hanno and --

14 MR. HILL: Your Honor, please,

15 THE COURT: You do recall being asked that question
16 and giving that answer?

17 THE WITNESS: Yes.

18 THE COURT: Don't forget, Dr. Stern, Mr. Hellerstein
19 is aware of all the things you are aware of, and will have
20 a chance to conduct redirect examination and will bring
21 out all the things he wishes to be brought out.

22 THE WITNESS: I see, your honor, because that
23 was out of context.

24 Q Let me show you Plaintiff's Exhibit C, which is
25 a proposal dated August 31st, Doctor; I think you told us

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2 that was your -- that it was your understanding that upon
3 acceptance of either one of those proposals, that would
4 constitute your whole agreement with Satra. Is that a
5 fair statement of your testimony?

6 A Yes.

7 I don't know what you mean by "whole agreement"
8 in a legal sense, so the answer is yes.

9 Q That agreement contained all the terms that had
10 been agreed upon by you and Mr. Oztemel, is that correct?

11 A Yes.

12 Q Could you describe for us what your understanding
13 was at that time of the services that you were to render
14 under that agreement? I take it that the services would
15 be the same, regardless of which proposal you accepted.
16 Or would they?

17 A I don't know.

18 Q You don't know?

19 A I don't know. I just decided on Alternative 1
20 and that is the one I made sure I understood I was going to
21 perform.

22 Q Let me ask you this: Did you read Proposal 2
23 at all?

24 A I scanned it.

25 Q If you can tell me and if you had an understanding

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2 at that time, how was Propsal 2 different from Plaintiff's
3 Exhibit B, which you told me a little while ago you
4 accepted over a telephone in a conversation with Mr.
5 Oztemel, if you now have an understanding?

6 A It differs in several respects. The language
7 is different; the amount of money is different.

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